Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

Warren J. Michaels, Executor,
Estate of Edna L. Nelson,
Petitioner,

v.

Bank of America N.T. & S.A. and
Citizens Federal Bank,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Warren J. Michaels, Executor,
Estate of Edna L. Nelson
In Propria Persona
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26PP

QUESTIONS PRESENTED

1. Whether an order for relief from the bankruptcy automatic stay against property of the estate granted under 11 U.S.C. §362(d)(2) is a nullity where it is subsequently discovered and timely raised that the bankruptcy judge owned stock in the movant at the time the relief was granted.

2. Whether an order for relief from the bankruptcy automatic stay against property of the estate granted under 11 U.S.C. §362(d)(2) is a nullity where it is subsequently discovered that the movant's claim of a lien against the property, under penalty of perjury, is false.

3. Whether state *res* judicata and collateral estoppel doctrine can be applied to bar litigation of core bankruptcy issues in a bankruptcy court where abstention under 28 U.S.C. §1334(c)(1) is not obtained.

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PETITION FOR WRIT OF CERTIORARI

Warren J. Michaels, Executor, estate of Edna L. Nelson, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

DECISION AND ORDERS BELOW

The memorandum decision of the court of appeals (App. 01-02) is unreported. The orders of the district court affirming the decision of the bankruptcy court (App. 33-36) are unreported. The order of the bankruptcy court granting the respondents' motions to dismiss (App. 27-29) is unreported.

JURISDICTION

The court of appeals entered its memorandum decision on July 21, 1999 (App. 01-02), and a timely petition for rehearing and suggestion for rehearing *en banc* was denied on September 7, 1999 (App. 41). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The pertinent text of the constitutional provisions, statutes, and rules involved in this case are set out verbatim in the Appendix (App. 42-50). They are:

U.S. Const. art. I, § 1; U.S. Const. art. I, § 8, cl. 4
U.S. Const. art. I, § 8, cl. 18; U.S. Const. art. III, § 1
U.S. Const. art. III, § II, cl. 1; U.S. Const. art IV, § 1
U.S. Const. art. VI, cl. 2; U.S. Const. amend. V
11 U.S.C. §§ 105(a); § 362(a), (c), (d), & (h); & § 541(a)
28 U.S.C. §§ 157; § 455; § 1334; & § 2283
Fed.R.Civ.P. 60(b); Fed.R.Bankr.P. 2004(a) & 5004(a).

STATEMENT OF THE CASE

Introduction.

This case involves the bankruptcy court's dismissal o core bank claims under 11 U.S.C. §362(h), for willfu violation of the automatic stay, and under 28 U.S.C §157(b)(2)(K), for a determination of the validity, extent, an priority of a lien in property of the estate. The Court o Appeals for the Ninth Circuit barred the 11 U.S.C. §362(h claim by *res judicata* and collateral estoppel applied to a stat court action brought by Edna L. Nelson, deceased, agains respondents and the debtor during the pendency of th bankruptcy case. The court of appeals held that th determination of the lien validity issue could not b maintained because the subject property was properl foreclosed upon and sold to a third party and therefore th estate has no interest in the property.

Edna Nelson filed the complaint in the state cour action in the Superior Court of the State of California i March of 1993. This occurred in between the time stipulated judgment and order of the bankruptcy court wa effectively executed, on February 11, 1993, and the date o its entry on April 30, 1993. The stipulated order, discusse infra, provides Edna Nelson with the right to contest Bank o America's claimed lien against the subject property eve though the bankruptcy judge had already granted relief fro the automatic stay against the property to Bank of America.

On April 16, 1993, Citizens Federal Bank, a non entity in the bankruptcy case, foreclosed on the subjec property involved in both the state case and the bankruptc proceedings. Citizens claims to have been the beneficiary o the deed of trust foreclosed upon at the time when Bank o America, under penalty of perjury, claimed to be th beneficiary in its motion for relief from the automatic stay Edna Nelson alleged in the bankruptcy adversary complain against the banks that the deed of trust was tantamount to

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forgery and that neither of the respondents was the beneficiary of the deed of trust.

In or about July of 1997, when jurisdiction of this case was in the court of appeals, Edna Nelson discovered that the bankruptcy judge owned stock in the respondents during the pendency of the bankruptcy proceedings. The financial disclosure reports filed by the bankruptcy judge with the Judicial Conference of the United States disclose the following:

(a) The bankruptcy judge acquired stock in Bank America Corporation on August 15, 1991, the date the debtor executed his bankruptcy petition;
(b) He sold some of the stock on July 29, 1992, the date of the entry of his order which granted relief from the automatic stay to Bank of America; and
(c) He continued to hold stock in the Bank through at least December 31, 1995, a date after he dismissed the complaint in this case.
(d) He owned stock in Nationsbank Corp.[1] during the date Citizens Federal Bank was dismissed and at least until December 31, 1995.

The bankruptcy judge's financial disclosure reports are contained in Ms. Nelson's motion to disqualify him from further proceedings filed in the bankruptcy court on September 4, 1997 and in her request for judicial notice filed in the court of appeals on September 29, 1997. The financial disclosure reports are also contained in the appendix to the petition for rehearing and suggestion for rehearing *en banc* filed in the court of appeals on August 9, 1999, pages 4 to 10.

Edna Nelson filed a complaint in the Superior Court of the State of California against the debtor, Ralph Gilbert Nelson, Bank of America, and Citizens Federal Bank. The

[1] Nationsbank Corp. completed an acquisition of CSF Holdings, Inc., the parent company of Citizens Federal Bank, on January 10, 1996. This fact in included in Edna Nelson's request for judicial notice filed in the court of appeals on September 29, 1997.

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color of jurisdiction of the state court action, discussed infr
was based upon the appearance of valid relief granted fro
the automatic stay under 11 U.S.C. §362(d)(2) to Bank
America. Allegations of fraud perpetrated by the respondent
on the state court and the bankruptcy court is also at issue
this case.

In its decision, the court of appeals is silent on th
bankruptcy judge's conflict of interest and the issue
whether a bankruptcy judge has the power to grant relie
from the stay to an entity that does not have an interest in th
property. The court also is silent on the allegations of frau
on the courts.

Citation to the record of all of the aforementione
relevant facts referred to in this introduction will b
specifically included in the detailed statement of the cas
infra.

Background.

Ralph Gilbert Nelson, the debtor, and Edna L. Nelso
were divorced by decree of the Superior Court of the State
California on June 22, 1989. Their community property wa
divided in accordance with a marital settlement agreemen
made part of the decree. The subject property of th
dismissed bankruptcy adversary proceeding is the Nelson
former residence located at Thunderbird Heights in Ranch
Mirage, California. The residence was divided equally unde
the decree with the provision that Ralph Nelson mak
payments on the mortgage until the property was sold.

The Bankruptcy Petition.

Ralph Gilbert Nelson filed a petition under Chapter
of the Bankruptcy Code on August 16, 1991, in the Unite
States Bankruptcy Court for the Central District of Californi
The Nelsons' former residence is listed in the petition as a
asset subject to a first mortgage to Bank of America. Citizen

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Federal Bank is not listed as a creditor in the petition. Ralph Nelson also listed, as dischargeable debts, all of the obligations to Edna Nelson arising out of the Superior Court divorce decree, except spousal support. Included in this category of listed dischargeable debts is the Superior Court's division of retirement funds to Edna Nelson in the amount of $534,100.

Adversary Proceeding No. SB-91-1580-MG.

On November 12, 1991, Edna Nelson filed a complaint in the bankruptcy court, Adversary Proceeding No. SB-91-1580-MG, to determine the dischargeability of the obligations and divisions of property subject to the divorce decree listed by Ralph Nelson as dischargeable debts in his petition. The complaint also alleged that the discharge of the debtor should be denied under 11 U.S.C. §727(a)(3) for concealment and falsification of records and under 11 U.S.C. §727(a)(4) for knowingly and fraudulently making a false oath in his bankruptcy petition. The Adversary Proceeding was settled by the bankruptcy court's stipulated judgment and order entitled "Stipulation to Judgment; Order Thereon;", discussed infra.

Grant of Relief from the Automatic Stay.

On July 10, 1992, Bank of America filed a motion for relief from the automatic stay under 11 U.S.C. §362(d) by and through its attorney Glen R. Segal. (ER[2], 001-004) Edna Nelson was not noticed of the motion despite the fact that the motion was made during the pendency of her adversary proceeding, involving the property, against Ralph Nelson, debtor. (ER, 004) The notice to Ralph Nelson was addressed

[2] ER refers to the excerpts of record filed in the court of appeals with Appellant, Edna L. Nelson's opening brief on October 2, 1997.

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to his former residence, not to his then current residen listed in his bankruptcy petition. (ER, 004)

The motion discloses that a notice of default w recorded on August 22, 1991, six days after the bankrupt petition was filed. (ER, 002) The evidence submitted with t motion includes declarations under penalty of perjury b Carol Dino, the custodian of business records for Bank America (ER, 106-108), and Michael Hutchinson, the bank appraiser. (ER, 109-110)

The Dino declaration stated that Debtor defaulted the loan payment due February 1, 1991 to Bank of Americ in the approximate sum of $416,767.34 exclusive of accru interest. (ER, 107) The Hutchinson declaration contained computer file identifier: "f:\bk\gs\01\08\91". (ER, 109&110

Other evidence submitted with the motion included copy of a promissory note (ER, 005) and a recorded deed trust against the subject property claimed by the bank to b executed by the Nelsons. (ER, 091-095)

The bankruptcy court granted Bank of America motion for relief from the stay on July 28, 1992 on groun set forth under 11 U.S.C. §362(d)(2). (ER, 111-113) N person other than Bank of America's attorney appeared at t hearing. (ER, 006)

The following day, on July 29, 1992, the order relief from the automatic stay to Bank of America w entered. (ER, 111) Also on July 29, 1992 was the fir voluntary settlement conference in Adversary Proceeding N SB-91-1580-MG. (App. 09) It was at this conference that t bankruptcy judge informed Edna Nelson that he grante Bank of America relief from the stay. (Ms. Nelson statement is included in her request for judicial notice filed the court of appeals on September 29, 1997 at page 6).

On July 29, 1992, Edna Nelson was ignorant of t following facts:

(a) the bankruptcy judge owned stock in Bank America and sold some of it on the date the ord was entered;

(b) her bankruptcy attorneys represented Bank of America in other matters;
(c) Citizens Federal Bank would later make a claim that it was the beneficial owner of the deed of trust;
(d) two distinctly different deeds of trust and one distinctly different promissory note from those presented in the motion for relief from the stay would surface later;
(e) as alleged in the complaint, discussed infra, the two promissory notes and three deeds of trust do not contain her genuine authorized signature.

Ex-parte Hearing on December 21, 1992.

An ex-parte hearing occurred on December 21, 1992 at the third voluntary settlement conference in Adversary Proceeding No. SB 91-1580 MG. The bankruptcy judge requested a conference with Edna Nelson in chambers without a court reporter.

Ms. Nelson presented a motion to examine the records of Bank of America and Citizens Federal Bank in accordance with Fed.R.Bankr.P., Rule 2004. The motion was necessitated by Ms. Nelson's then recent discovery that Citizens Federal Bank claimed to be the owner and holder of the deed of trust. The banks were also concealing information from her concerning the residence and their claimed interest in the deed of trust. Ms. Nelson's bankruptcy attorney refused to present the motion because his firm represented Bank of America in other matters but he continued to represent her throughout the remainder of the adversary proceeding.

The bankruptcy judge denied Ms. Nelson's motion but he guaranteed to protect her concerns about fraud through the Stipulation, discussed infra.

The fact that there was a settlement conference on December 21, 1992 is evidenced in the Stipulation on page 1.

(App. 09) The facts about what occurred in chambers at th ex-parte hearing are contained in Ms. Nelson's request f judicial notice of her motion to disqualify the bankrupt judge filed in the court of appeals on September 29, 1997 page 8.

The Stipulation in Adv. Proc. SB 91-1580 MG.

On April 30, 1993, the bankruptcy court entered stipulated judgment and order entitled "Stipulation Judgment; Order Thereon;" in Adversary Proceeding No. S 91-1580 MG. (App. 08-22)

The Stipulation was effectively executed on Februar 11, 1993, the date of the last settlement conference. No par actually executed it on that date. (App. 22)

The Stipulation provides for Ms. Nelson to dismi her fraud claims under 11 U.S.C. §727 (App. 09) an relinquished her spousal support for life. (App. 16)

The Stipulation further provides for Ms. Nelson receive the right, title and interest in four real propertie including the Nelson's former residence described in th document as Lot 13 of Thunderbird Heights. (App. 12-14)

The Stipulation contained the "lien contest" claus guaranteed to her by the bankruptcy judge at the ex-par hearing held on December 21, 1992.

The "lien contest" clause reads:

"Plaintiff takes the four real properties referred herein subject to the liens and encumbrances of record as July 29, 1992 but reserves the right to contest any liens oth than non-dischargeable tax obligations ***" (App. 13)

The Stipulation contains the bankruptcy judge guarantee to Ms. Nelson that the bankruptcy court woul protect her from fraud.

The provision reads:

"The United States Bankruptcy Court shall reser jurisdiction to implement all terms of this Stipulatio

excepting only the enforcement of spousal support, which shall remain with the State Court." (App. 19)

The Stipulation was conditioned on notice to all creditors and the bankruptcy trustee because of it involved issues under 11 U.S.C. §727. (ER, 149). All creditors, including Bank of America, and the bankruptcy trustee were noticed but no one objected.

The Superior Court action, Case No. 231959.

On March 22, 1993, Ms. Nelson filed a complaint against respondents, debtor, and others. (Appellees' Bank of America and Citizens Federal Bank Excerpt of Records filed in the court of appeals on October 28, 1997 at pages 0 to 37) Among other things, the complaint alleged fraud, conspiracy, and other acts intended to deprive Ms. Nelson of her interest in the residence.

Respondents and debtor all filed motions for summary judgment. The Superior Court granted all of the motions at a hearing on January 18, 1995. On March 15, 1995, subsequent to the order on Bank of America's motion, the Superior Court filed an order on Ralph Nelson's motion. The order barred Ms. Nelson's entire complaint on grounds that the Stipulation was *res judicata* and collateral estoppel. (App. 53-55)

Among other reasons, Ms. Nelson had no choice but to file an action in state court in an attempt to stop the foreclosure of the residence. She was induced into believing that the bankruptcy judge had granted valid relief from the automatic stay. Ms. Nelson's bankruptcy attorney would not bring the matter to the attention of the bankruptcy court because of his conflict of interest with Bank of America. Moreover, the Stipulation was not then entered in the records of the bankruptcy court.

On August 5, 1996, Ralph Gilbert Nelson wrote a letter to Edna Nelson. In the letter was the following statement regarding the continuation of Ms. Nelson's

bankruptcy attorney in the bankruptcy proceedings after he knew he had a conflict of interest with Bank of America.

The statement reads:

"Perhaps he did so at the Court's request?" (ER, 220)

Bankruptcy Adv. Proc. No. SB 95-01438 MG.

On August 5, 1993, Adversary Proceeding No. SB 91-1580 MG was closed. (ER, 027) On March 7, 1994, the bankruptcy case was closed. (ER, 027) On March 24, 1995 Ms. Nelson filed motions to reopen the adversary proceeding and bankruptcy case. All creditors reasonably believed to have an interest in the matter, including Bank of America and the bankruptcy trustee were serviced notice of the motions. Hearings were held on April 25, 1995 and May 23 1995.

The bankruptcy court found good cause for reopening the cases to allow Ms. Nelson to file complaints to raise unsettled issues provided for in the Stipulation, including her right to contest the validity of Bank of America's claimed lien to the residence.

On June 8, 1995, the bankruptcy court entered an order reopening Adversary Proceeding No. SB 91-1580 MG. (App. 23-24) On June 12, 1995, the bankruptcy court entered an order reopening Bankruptcy Case No. SB 91-19414 MG. (App. 25-26)

On August 10, 1995, Ms. Nelson filed a complaint against Bank of America, Citizens Federal Bank, and Does 1 through 50, Adversary Proceeding No. SB 95-01438 MG. (ER, 023-043). Bankruptcy court jurisdiction was invoked under 28 U.S.C. §1334, 28 U.S.C. §157, and the reserved jurisdiction provided for in the Stipulation.

The complaint contains two statutory claims for relief. The first claim is under 11 U.S.C. §362(h) for willful violation of the automatic stay. (App. 45). The second claim under 28 U.S.C. §157(b)(2)(K) is for a determination of the

validity, extent, and priority of a lien in property of the estate. (App. 46)

The material allegations in the complaint are:

(a) The respondents concealed information from Ms. Nelson during the pendency of the bankruptcy case and in the state court action. (ER, 033-038).

(b) That Bank of America intentionally made false statements in its declaration, under penalty of perjury, in its motion for relief from the automatic stay. (ER, 039)

(c) Respondents willfully violated the automatic stay by foreclosing on the residence. (ER, 040)

(d) The respondents have uttered three distinctly different deeds of trust and two distinctly different promissory notes related to the same escrow transaction involving the residence. (ER, 042)

(e) None of the deeds of trust and promissory notes uttered by respondents contain Ms. Nelson's genuine authorized signatures. (ER, 042)

(f) Neither of the respondents were the holders of the promissory note and deed of trust related to the residence on April 16, 1993, the date of the foreclosure. (ER, 042)

On September 5, 1995, Ms. Nelson served Bank of America with a request to produce the original material documents related to the residence in its exclusive possession and control that have never been produced in any proceeding. (ER 151-159)

On September 5, 1995, each of the respondents filed a motion to dismiss. Bank of America also requested that the bankruptcy court take judicial notice of the state court action in which it was granted summary judgment. (ER, 49-50) On November 17, 195, Ms. Nelson filed her objection to Bank of America's request except to the extent that the documents proved her case that the respondents violated the automatic stay and that they perpetrated a fraud upon the bankruptcy court. (ER, 51-60)

Also on November 17, 1995, Ms. Nelson filed h brief in opposition to Bank of America's motion to dismi (ER, 61-85) and her own request for the bankruptcy court t take judicial notice. (ER, 86-159)

Ms. Nelson's request for judicial notice included th two allegedly uttered promissory notes (ER, 88-90), the thre allegedly uttered deeds of trust (ER, 91-105), the allege false declaration of Carol Dino (ER, 108), the alleged suspicious declaration of Michael Hutchinson (ER, 109-110 the allegedly perjurious testimony of Jerry Ray, a Bank o America employee, in the state court action (ER, 137-141 and the documents to support the allegations of perjur against Jerry Ray. (ER, 128-136)

Ms. Nelson's request for judicial notice also include the following:

(a) A purported assignment of deed of trust execute by Bank of America on December 11, 1986. (ER, 117)

(b) An assignment of a deed of trust from Bank o America to Citizens recorded on April 20, 199 four days after the foreclosure and notarized b Jerry Ray. (ER, 118-119)

(c) The trustees deed upon sale disclosing tha Citizens, not Bank of America, foreclosed on th residence. (ER-120-121)

(d) A letter dated November 2, 1992 from Bank o America attorney, Glen R, Segal, indicating tha he has no knowledge that he acted for a undisclosed principal in Bank of America' motion for relief from the automatic stay. (ER, 114) (App. 51)

In a letter dated December 24, 1992, Citizens claime to be the then current holder of the promissory note and tha it purchased the note from Bank of America on January 15 1992. This letter is included in Ms. Nelson's request fo

judicial notice filed in the court of appeals on September 29, 1997. (App. 52)

The bankruptcy court's hearing of the respondents' motions to dismiss for failure to state a claim occurred on November 28, 1995. The bankruptcy court granted each of the respondents' motions. The bankruptcy court made no finding of *res judicata* or collateral estoppel. In short, the bankruptcy court's reasoning was that the respondents could not have violated the automatic stay because he granted relief from the stay. (ER, 178)

On or about December 11, 1995, Bank of America lodged its proposed findings of fact, conclusions of law, and order. On December 18, 1995, Ms. Nelson filed her objections to them. She vehemently objected to the accuracy of the finding, conclusions, and order on grounds that they were not in accord with the hearing and were an attempt by Bank of America to conceal the frauds perpetuated upon the courts. (ER, 189-193)

Except for minor changes, the bankruptcy court adopted the findings, conclusions, and order proposed by Bank of America and entered them on January 5, 1996. (App. 27-32)

Ms. Nelson filed a timely notice of appeal and elected to have the district court hear the appeal.

Proceedings in the District Court.

The United States District Court for the Central District of California had jurisdiction to hear the appeal from the final order of the bankruptcy court (App. 27-29) under 28 U.S.C. §158(a).

On October 25, 1996, without a hearing, the district court entered its order affirming the order of the bankruptcy court (App. 33-34). The last sentence in the order reads as follows: "The Court may amend or amplify this order with a more specific statement of the grounds for its decision." (App. 34)

Edna Nelson filed a timely motion for rehearing alter or amend the district court's order in which sh requested the district court judge to state the more specif grounds for its decision.

On December 2, 1996, without a hearing, the distri court entered its order denying the motion for rehearin (App. 37-38). Again, the last sentence in the order reads a follows: "The Court may amend or amplify this order with more specific statement of the grounds for its decision. (App. 38)

All of the aforementioned proceedings in the distri court occurred at a time when Edna Nelson was in a battle fo her life against colon cancer. To assure herself of a right to a appeal of the district court orders, Ms. Nelson filed timel notices of appeal to the Court of Appeals after the distri court entered each of its ambiguous orders.

On December 21, 1998, the United States Court o Appeals filed an order remanding the case to the district cou on a limited basis. The purpose of the order was to permit th district court to enter a judgment which satisfies the standar set forth in *National Distribution Agency v. Nationwid Mutual*, 117 F.3d 432 (9th Cir. 1997). (App. 04)

On January 14, 1999, the district court entered it amended order affirming the order of the bankruptcy cour (App. 35-36)

On January 25, 1999, the district court entered it amended order denying Edna Nelson's motion for rehearing to alter or amend the district court's order. (App. 39-40)

Proceedings in the Court of Appeals.

The United States Court of Appeals for the Ninth Circuit had jurisdiction to hear the appeal from the final order of the district court under 28 U.S.C. §158(d).

As discussed supra, in or about July of 1997, Edna Nelson discovered the bankruptcy judge's financial interests in the respondents. On September 29, 1997, she filed a request for the court of appeals to take judicial notice of her motion to disqualify the bankruptcy judge that she filed in the bankruptcy court on September 4, 1997. Concurrently filed with her request for judicial notice, Ms. Nelson filed motions for orders of summary reversal and summary disposition of the bankruptcy court and district court orders with remand instructions or in the alternative for an order allowing her to amend her opening brief.

On November 4, 1997, Ms. Nelson filed a request for the court of appeals to take judicial notice of the final judgment in Superior Court of the State of California, Case No. 232959.

On December 9, 1997, the court of appeals filed an order denying Ms. Nelson's motions for summary reversal and summary disposition. The same order referred her requests for judicial notice of her motion to disqualify the bankruptcy judge to the panel that was to be assigned to hear the merits of the appeal. (App. 03)

On May 20, 1999, Edna Nelson passed away after a long battle against Class IV metastasized colon cancer.

On May 28, 1999, the appeal was calendared for hearing on July 16, 1999 in Pasadena, California.

On June 24, 1999, Warren J. Michaels, Executor, Estate of Edna L. Nelson filed a motion to substitute as a party for the deceased Ms. Nelson. An order granting the motion was filed in the court of appeals on June 24, 1999. (App. 05)

On July 6, 1999, the court of appeals filed an o submitting the case on the briefs and record without argument on July 16, 1999. (App. 6)

On July 21, 1999, the court of appeals filed memorandum decision in this case. (App. 01-02) The cou decision barred the 11 U.S.C. §362(h) claim by *res judic* and collateral estoppel applied to the state court act against the respondents and the debtor. The court also h that the determination of the lien validity issue could not maintained because the subject property was prope foreclosed upon and sold to a third party and therefore estate has no interest in the property.

The court of appeals cited *In re Russell*, 76 F.3d 24 245 (9th Cir. 1996) as authority to bar the 11 U.S.C. §362(claim. (App. 02) The court of appeals in *Russell* appli California *res judicata* and collateral estoppel doctrine to t Russells' civil rights action under 42 U.S.C. §1981 filed the bankruptcy court.

In its decision, the court of appeals is silent on t bankruptcy judge's conflict of interest and the issue whether a bankruptcy judge has the power to grant reli from the stay to an entity that does not have an interest in t property. The decision is also silent on the allegations fraud on the courts.

It is petitioners' contention that the decision of th court of appeals is not only extremely erroneous but i silence also sanctions serious federal judge misconduct an state court intrusion into federal bankruptcy core matters tha Congress intended to be exclusive to the federal courts unles otherwise authorized by law. The aforementioned contention and arguments are contained in Ms. Nelson's openin appellate brief (filed on October 2, 1997), her request fo judicial notice (filed September 29, 1997), and in her motion for summary reversal and disposition (filed September 29 1997).

It is petitioners' contention that the bankruptcy judge's grant of relief from the automatic stay is a nullity for two very important statutory and public policy reasons. The first reason is that a bankruptcy judge is disqualified from judicial proceedings when he owns any financial interest in a party. The second reason is that it is beyond the power of the bankruptcy court to grant relief from the automatic stay against property to a non-creditor of the estate unless that real party is disclosed. Thus, it is petitioners' contention that the property still remained property of the estate when Ms. Nelson filed her state court action against the respondents and the debtor. Therefore, it is petitioners' contention that the state court action is a nullity because it violated the injunction of the automatic stay and was induced by the misconduct of the bankruptcy judge and the respondents.

Moreover, it is petitioners' contention that the state court lacked subject matter jurisdiction to adjudicate bankruptcy estate matters unless the bankruptcy court abstains under 28 U.S.C. §1334.

All of the aforementioned contentions and arguments were raised in petitioners' petition for rehearing and suggestion for rehearing *en banc* filed in the court of appeals on August 9, 1999.

Warren J. Michaels filed a timely request for an order to grant him an extension to file a petition for rehearing and suggestion for rehearing *en banc*. The order granting his motion was filed on July 30, 1999. (App. 07)

On August 9, 1999, Mr. Michaels filed his petition for rehearing and suggestion for rehearing *en banc*. On September 7, 1999, the court of appeals filed an order wherein the panel denied the petition for rehearing and suggestion for rehearing *en banc*. (App. 41)

Thus, petitioner and Edna Nelson were denied all of the opportunities to oral argue the case before the district court and the court of appeals.

REASONS FOR GRANTING THE PETITION

The memorandum decision of the United States Cou of Appeals for the Ninth Circuit is silent on the issue of th bankruptcy judge's financial interest in the respondents. Th bankruptcy judge's financial disclosure reports filed by hi with the Judicial Conference of the United States disclos that he was plainly in violation of 28 U.S.C. §455(b)(4 Thus, this case is a timely and rare opportunity to call for a exercise of this Court's supervisory power over the Court o Appeals decision which has so far departed from the accepte and usual course of judicial proceedings.

The Court of Appeals decision effectively sanction state court intrusion into federal bankruptcy jurisdiction an core matters in the opposite jurisdictional direction of th proper statutory interpretation of 28 U.S.C. §1334 and th intent of Congress thereof. Therefore, the Court of Appeal has decided an important question of federal law that has no been, but should be, settled by this Court.

Moreover, the decision below is erroneous, and th issues that it addresses are important.

I. It is Self Evident that the Federal Judiciary Must Apply the Law to Itself.

Public confidence in the integrity of the judiciary is supremely important. Judges are an integral part of the judicial machinery. They are the protectors of due process of law. No person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. amend. V.

In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 859-60, n. 8, this Court acknowledged that 28 U.S.C. §455(b)(4) requires a judge to disqualify himself no matter how insubstantial the financial interest and regardless of whether or not the interest creates an appearance of impropriety. The Court noted the stricter provisions of section 455(b) in comparison to section 455(a). In *Liljeberg*,

the Court was also concerned about the constitutional dimensions and due process. *Id.* at 865 n.12.

The silence of the court of appeals on the issue of the bankruptcy judge's stock ownership in the respondents is puzzling at best. The bankruptcy judge acquired the stock in BankAmerica Corp. on the date the debtor executed his petition. He sold some of it on the day after he granted relief from the automatic stay to Bank of America. He continued to hold the remaining stock interest for over three years included therein the date on which he granted Bank of America its motion to dismiss Ms. Nelson's claims.

It is clear of course that the statute requires the judge to have knowledge of the fact that he owns a financial interest in a party to a proceeding. In this case it can hardly be denied that the bankruptcy judge did not have knowledge. Five consecutive annual financial disclosure reports that he filed with the Judicial Conference of the United States disclose his stock interest in BankAmerica Corp.

There can be no argument that bankruptcy judges are not covered in the statute. Rule 5004(a) of the Federal Rules of Bankruptcy Procedure reads:

"A bankruptcy judge shall be governed by 28 U.S.C. §455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case.

The public could construe the court of appeals silence on this matter as avoidance by the federal judiciary to apply the law to itself.

In *Liljeberg*, the Court affirmed vacatur as the appropriate remedy where section 455(a) is violated.(*Id.* at 870.) The Court should reverse the decision of the court of appeals in this case where section 455(b)(4) was violated. The third Circuit has said: "A judge who was obliged to recuse acts outside his jurisdiction." *Moody v. Simmons*, 858 F.2d 137 (3rd Cir. 1988). The Ninth Circuit has held that a grant of relief from the automatic stay is a legal nullity where

the bankruptcy court exceeds its jurisdiction. *Taylor v Tsafaroff* (In re Taylor) 884 F.2d 478, 482 (9 th Cir. 1989). Therefore, the bankruptcy court's grant of relief from the automatic stay to Bank of America should be null and void.

II. Where a Judge Acts Outside His Jurisdiction His Actions are Null and Void.

As discussed infra, when the bankruptcy judge failed to disqualify himself his orders are null and void. In this appeal case, there is another very important reason why his order granting relief from the automatic stay is a nullity. A bankruptcy court's power under 11 U.S.C. §105 is limited to orders necessary and appropriate to carry out the provisions of title 11.

The bankruptcy judge granted relief from the automatic stay to Bank of America under 11 U.S.C. §362(d)(2). The statute requires that a party in interest must make the request for relief. The allegations in the complaint and the evidence submitted at the hearing of respondents' motion to dismiss disclose that Bank of America was not a party in interest at the time relief was granted. If there is any doubt, the matter should be heard by a judge who does not have a financial interest in the respondents.

III. The Decision of the Court of Appeals is Clearly Erroneous.

The court of appeals decision is clearly erroneous even if the bankruptcy judge's conflicts of interest are not considered. Section 1334(c)(1) of title 28 requires the district court to abstain before a state court could even consider hearing a core bankruptcy matter. In this appeal case, neither the district court nor the bankruptcy court abstained.

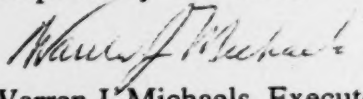
The abstention issue is an extremely important statutory and policy matter. The Constitution provides Congress with the authority to establish uniform laws on the

subject of Bankruptcy. U.S. Const. art. I, §8, cl. 18. Prior to the enactment of the Bankruptcy Code in 1978, jurisdiction of all matters and proceedings in bankruptcy was vested in the district court to the exclusion of the state courts. The subsequent statutory schemes were enacted to provide more jurisdiction to the bankruptcy court not the state courts. Any other plain reading of the current statute would allow state court intrusion into federal bankruptcy matters without the authorization of the law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Warren J. Michaels, Executor
Estate of Edna L. Nelson
In Propria Persona
2245 Gene Autry Trail, Unit E
Palm Springs, California 92264
(760) 770-3653

December 3, 1999

APPENDIX

(2)

Supreme Court, U.S.
FILED

99 978 DEC 6 1999

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Warren J. Michaels, Executor,
Estate of Edna L. Nelson,
Petitioner,

v.

Bank of America N.T. & S.A. and
Citizens Federal Bank,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Warren J. Michaels, Executor,
Estate of Edna L. Nelson
In Propria Persona
2245 Gene Autry Trail, Unit E
Palm Springs, California 92264
(760) 770-3653

57PP

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FILED
JUL 21 1999
Cathy A. Catterson, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: Ralph Gilbert Nelson Debtor.	
Warren J. Michaels, executor of the estate of Edna Louise Nelson, Plaintiff-Appelant, v. Bank of America, National Trust & Savings Association, a national banking association, Citizens Federal Bank, a federal savings bank, Defendants-Appellees.	No. 96-56822 D.C. No. CV 96-01555-JSL MEMORANDUM*

Appeal from the United States District Court
For the Central District of California
J. Spencer Letts, District Judge, Presiding

Submitted July 16, 1999**

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9 th Cir.R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a)(2).

Pasadena, California

Before: Brunetti, Rymer, and Silverman, Circuit Judges.

Warren J. Michaels, executor of the estate of Edna Louise Nelson, [1] appeals from a district court order affirming the bankruptcy court's dismissal of this adversary proceeding. The district court had jurisdiction pursuant to 28 U.S.C. §158(a). We have jurisdiction pursuant to 28 U.S.C. §158(d), and we affirm.

The issue litigated in this proceeding, whether Bank of America had the right to foreclose on the property, was previously litigated by Ms. Nelson in state court. The state court granted summary judgment in favor of Bank of America. Accordingly, the section 362(h) claim is barred by res judicata and collateral estoppel. Cf. In re Russell, 76 F.3d 242, 245 (9th Cir. 1996).

As the property was properly foreclosed upon and sold to a third party, Nelson's estate has no interest in the property, and Michaels cannot maintain an action to determine the extent of Bank of America's and Citizen's liens.

AFFIRMED

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[1] Nelson passed away while this appeal was pending. Michaels was substituted as a party pursuant to Fed.R.App.P. 43(a)(1).

FILED
DEC-9 1997
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: Ralph Gilbert Nelson,	) No. 96-56822
Debtor,	) DC# CV 96-1555-JSL
	) Central California
Edna Louise Nelson,	)
	) ORDER
Plaintiff-Appellant,	)
v.	)
Bank of America, National Trust & Savings Association, a national banking association; et al.,	)
Defendants-Appellees.	)

Before: Peter L. Shaw, Appellate Commissioner

Appellant's motion for summary reversal is denied. See 9 th Cir. 3-6.

Appellant's motion for summary disposition is denied.

Appellant's motions to take judicial notice, motion for publication, and motion for disqualification of the bankruptcy judge are referred to the panel that will be assigned to hear the merits of this appeal.

This case is ready for calendaring.

s/ Peter L. Shaw
General Order 6.3(e)

Comm/11.97/kd

FILED
DEC 21 1998
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Edna Louise Nelson,	No. 96-56822
Plaintiff-Appelant,	DC# CV-96-01555-JSL Central District of California
v.	(Los Angeles)
Bank of America, National Trust & Savings Association; Citizens Federal Bank;	ORDER
Defendants-Appellees.	

Before: Peter L. Shaw, Appellate Commissioner

This appeal is remanded to the district court on a limited basis to permit the district court to enter a judgment which satisfies the standard set forth in *National Distribution Agency v. Nationwide Mutual*, 117 F.3d 432 (9th Cir. 1997).

Within 35 days from entry of this order, counsel for Bank of America shall inform the court, in writing, as to the status of the district court proceeding. The issuance of a new judgment will terminate the limited remand.

A copy of this order shall be provided to District Judge Letts.

s/ Peter L. Shaw
General Order 1.8

s:\casemgmt\orders\96-56822\kb

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JUN 24 1999
Cathy A. Catterson, Clerk
U.S. Court of Appeals

In re: Ralph Gilbert Nelson,	
Debtor,	No. 96-56822
Edna Louise Nelson,	D.C. No. CV 96-01555-JSL Central District of California
Plaintiff-Appelant,	
v.	ORDER
Bank of America National Trust & Savings Association, a national banking association, Citizens Federal Bank, a federal savings bank,	
Defendants-Appellees.	

The motion of Warren J. Michaels, Executor of the Estate of Edna L. Nelson, to substitute as a party for the appellant, Edna L. Nelson, is granted. See Fed.R.App.P. 43(a)(1).

By Direction of the Court
Cathy A. Catterson
Clerk of Court

By s/ Gwendolyn Baptiste
Gwendolyn Baptiste
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JUL 6 1999
Cathy A. Catterson, Clerk
U.S. Court of Appeals

In re: Ralph Gilbert Nelson,	
Debtor,	No. 96-56822
Edna Louise Nelson,	D.C. No. CV 96-01555-JSL
	Central District of California
Plaintiff-Appelant,	
v.	ORDER
Bank of America National Trust & Savings Association, a national banking association, Citizens Federal Bank, a federal savings bank,	
Defendants-Appellees.	

This case shall be submitted on the briefs and record, without oral argument, on July 16, 1999, in Pasadena, California. Fed.R.App.P. 34(a)(2).

By Direction of the Court
Cathy A. Catterson
Clerk of Court

By s/ Gwendolyn Baptiste
Gwendolyn Baptiste
Deputy Clerk

ORDERED
Motion for extension of
Time to file petition for
Rehearing granted to:
8/11/99
For the Court
s/Donna M. Gilmore
Deputy
Clerk

Warren J. Michaels, Executor
Estate of Edna L. Nelson
4207 Ridgeway
San Diego, California 92116
Telephone: (619) 284-6598
In Propria Persona

FILED
JUL 30 1999
Cathy A. Caterson, Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In Re:	) Docket No: 96-56822
	) District Court Docket No:
Ralph Gilbert Nelson,	) CV 96-01555 JSL
	)
Debtor.	) Bankruptcy Case No:
	) SB 91-19414 MG
	) Adversary Proceeding:
	) SB 95-01438 MG
Warren J. Michaels, executor, Estate of Edna L. Nelson,	)
	)
Plaintiff-Appelant,	) Motion of
	) Plaintiff-Appellant
v.	) Warren J. Michaels,
	) Executor, Estate of
Bank of America, N.T.&S.A., Citizens Federal Bank,	) Edna L. Nelson, for an
	) order extending the time
	) in which to file a
Defendants-Appellees.	) Petition for Rehearing and
	) Suggestion for Rehearing
	) En Banc; Declaration of
	) Warren J. Michaels

Buchalter, Nemer, Fields & Younger
A Professional Corporation
Theodore C. Albert #81449
Jeffrey I. Golden #133040
660 Newport Center Drive, Suite 1400
P.O. Box 7338
Newport Beach, California 92658-7338
(714) 760-1121
Attorneys for Plaintiff, Edna Nelson

FILED
APR 29 1993

U.S. Bankruptcy Court
ENTERED
APR 30 1993
Frank E. Goodroe, Clerk of Court
Central District of California
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CASE NO: SB 91-19414 MG
	) CHAPTER 7
Ralph Gilbert Nelson,	)
	) Adv. No. SB 91-1580 MG
Debtor.	)
	) Stipulation To Judgment;
	) Order Thereon
Edna L. Nelson,	)
	)
Plaintiff.	) Date: February 8, 1993
	) Time: 10:00 a.m.
v.	) Ctrm:
	)
Ralph Gilbert Nelson,	)
	)
Defendant.	)
	)

THIS STIPULATION is entered into by and between plaintiff Edna Nelson (the "Plaintiff") and the defendant and

debtor Ralph G. Nelson, M.D. (the "Debtor"), after voluntary settlement conferences July 29, 1992, October 13, 1992, December 21, 1992, February 1, 1993, February 8, 1993 and February 11, 1993 and with respect to the following recitals:

RECITALS

A. Claims Resolved. In the complaint, Plaintiff seeks to determine dischargeability of certain spousal support issues in connection with a Marital Decree under 11 U.S.C. §523(a)(5) (THE "Support Issues") and to deny discharge to the Debtor generally under 11 U.S.C. §727. This stipulation is in settlement and compromise of the Support Issues only. All claims for relief in the complaint regarding denying the Debtor's discharge generally under 11 U.S.C. §727 are hereby dismissed.

B. The Marital Decree. Under that certain Judgment of Dissolution entered in Nelson v. Nelson, Superior Court of California, County of Orange, case no. D-291752 (the "Marital Decree"), a copy of which is attached hereto as Exhibit "1," the parties agreed, and the Superior Court correspondingly ordered, that, among other things:

1. That the Debtor would pay to Plaintiff for spousal support the sum of $6,000 per month, $3,000 on the first of each month and $3,000 on the fifteenth of each month, commencing January 1, 1989 and adjusted July 1, 1989 when it was to be reduced to $5,000 per month, payable $2,500 on the first and continuing at that rate until an escrow on the family residence commonly known as 40-741 Tonapah Road, Rancho Mirage (the "Tonapah Residence") closed, at which time, support would reduce to $3,000 per month which was to continue at that rate until remarriage of Plaintiff, the death of either party or further order of the Court;

2. Plaintiff was entitled to reimbursement of an aggregate of $18,000 on account of past spousal support, payment of community taxes and salary, which sums were to be paid not later than the close of escrow on the Tonapah Residence;

3. Furnishings in Plaintiff's possession and other items at the Tonapah Residence, as well as the Balboa Bay Club membership, were awarded Plaintiff as her separate property;

4. Debtor was awarded, among other properties relevant to the stipulation, the Mission Hills Country Club membership, the real property consisting of an office condominium commonly known as 1401 North Palm Canyon Drive, Suite 201, and that portion of what is referred to in the Marital Decree as "the Pension Plan"[1/] which included the real property consisting of an office condominium commonly known as 1401 North Palm Canyon Drive, Suite 203.

5. The parties acknowledged in the Marital Decree an obligation owing to the Pension Plan of $609,100,[2/]

1/ The parties acknowledge that by "Pension Plan" the parties intended reference to one or more of "Dermatology Medical Group of Palm Springs, a defined benefit pension plan" "Dermatology Medical Group of Palm Springs Pension Plan", and Dermatology Medical Group of Palm Springs Profit Sharing Plan" which are hereinafter referred to either singularly or collectively, as the context requires, as "the Pension Plan." Plaintiff has no knowledge of the existence of the Dermatology Medical Group of Palm Springs, a defined Benefit Trust and Plan" despite reference to same in Debtor's Schedules.

2/ The parties acknowledge that the $300,000 note may not have been the correct sum of several notes owing to the Pension Plans at the time of the Marital Decree Order, and the $300,100 was not an amount borrowed but was an investment by the Pension Plans in the Vacant Lot.

comprised of a note for $300,000 and $309,100 borrowed to purchase an unimproved lot commonly known as Lot 13, Thunderbird Heights (the "Vacant Lot") which under the Marital Decree was to be reimbursed to the Pension Plan from the sale of the Tonapah Residence and vacant lot.

6. Until the Tonapah Residence was sold, Debtor was given exclusive use of the Tonapah Residence, but also the responsibility to keep all mortgage, insurance and tax payments current and to keep the Tonapah Residence in good repair.

7. Debtor was required to pay Plaintiff $55,950 as an equalization payment, plus interest, within three years of May 1, 1989, to be secured by a trust deed against the 1401 North Palm Canyon, Suite 201 property. Further, it was provided that if Plaintiff received less than $534,100 from the Pension Plan as her share, the deficiency would be paid by Debtor as an additional equalization payment, secured by the 1401 North Palm Canyon, Suite 201 property.

C. Events After the Marital Decree. The parties found themselves unable or unwilling to abide by the terms of the Marital Decree by reason of various factors, including, but not limited to, the following:

1. Debtor fell into arrears on support payments.

2. The equalization payments referenced at paragraph B7 above were never paid, and, consequently, Plaintiff's trust deed securing same remains.

3. Debtor failed to keep mortgage, taxes and insurance current on the Tonapah Residence or to keep the residence in repair;

a. Any rights of offset or reimbursement for any real property payments were not effected;

4. The Tonapah Residence and vacant lot have not sold at any anticipated price and now foreclosure is threatened by the first mortgage on the Tonapah Residence;

5. The Superior Court ordered Debtor to pay $10,000 toward the fees and costs of Plaintiff's divorce attorney Pat McCall which has not been paid.

D. The parties wish to avoid the further expense and inconvenience of litigation

NOW, THEREFORE, IT IS STIPULATED:

1. All claims for relief in the complaint under 11 U.S.C. §727 are hereby dismissed.

2. In settlement and compromise of the claims for relief under 11 U.S.C. §523(a)(5), the parties agree to the following provisions, each of which will be and are nondischargeable by Debtor.

3. All right, title and interest of the following real properties belonging to the Pension Plan on June 22, 1989, subject to the liens of record before July 29, 1992, if any, shall be vested in plaintiff, or such person or entity as plaintiff may designate, free of all claims of the Debtor except as provided under this Stipulation, in accordance with and through the Qualified Domestic Relations Order ("QDRO") provided for or referenced herein. All right, title and interest in the following real properties not belonging to the Pension Plan shall be vested immediately in Plaintiff, subject to liens and encumbrances of record before July 29, 1992. No distribution of any assets from the pension plans shall occur before perfection of the QDRO unless approved

by this Court. Plaintiff takes the four real properties referred to herein subject to liens and encumbrances of record as of July 29, 1992 but reserves the right to contest any liens other than liens securing non-dischargeable tax obligations ("the authorized liens") in the following properties:

a. The Tonapah Residence, legally described as Lot 13 of Thunderbird Heights, No. 1, as per map recorded in Book 32, page 68 of maps, in the office of the County Recorder of Riverside County, California;

b. The property commonly known as 1401 North Palm Canyon Drive, Suite 201, Palm Springs, California, legally described as:

A condominium comprised of:

Parcel 1: An undivided 1/8 interest in and to Lot 1 of Tract No. 17943, as shown by Map on file in Book 127 pages 96 and 97 of Maps, Records of Riverside County, California.

Excepting therefrom Units 1A through 8A, as shown upon the condominium plan recorded November 4, 1982 as Instrument No. 192088 of Official Records of Riverside County, California.

Parcel 2: Unit 6A, as shown upon the condominium plan referred to in Parcel 1 above.

c. The property commonly known as 1401 North Palm Canyon Drive, Suit 203, Palm Springs, California, legally described as:

A Condominium comprised of:

Parcel 1: An undivided 1/8 interest in and to Lot 1 of Tract No. 17943, as shown by Map on file in Book 127 pages 96 and 97 of Maps, Records of Riverside County, California.

Excepting therefrom Units 1A through 8A, as shown upon the condominium plan recorded November 4, 1982 as Instrument No. 192088 of Official Records of Riverside County, California.

Parcel 2: Unit 5A, as shown upon the condominium plan referred to in Parcel 1 above.

d. The Vacant Lot legally described as Lot 14 of Thunderbird Heights No. 1, as per map recorded in Book 32 page 68 of maps, in the office of the County Recorder of Riverside County, California.

Debtor makes no warranties of title regarding these properties other than a warranty of good faith that he has not conveyed or hypothecated the properties to any third person or entity from the date of the Marital Decree.

Any lien in favor of Plaintiff arising from the recorded Marital Decree shall be subordinate only to the authorized tax liens. Other than as to authorized liens, Plaintiff shall be free to exercise any rights or priority afforded her by means of said Marital Decree or by the notice of lis pendens filed by her on certain of said properties. Any notice of lis pendens filed by Debtor, in his personal or trustee capacity, on said properties shall be withdrawn.

4. The parties acknowledge that one of the assets of the pension plans is a note/loan receivable ("promissory note") in the approximate sum of $300,000.00 belonging to the Pension Plan on June 22, 1989 and subject to the Marital Decree. One-half of that receivable shall be segregated in the QDRO to be distributed to Plaintiff pursuant to the 1989 Marital Decree, to the extent allowed by applicable law. The other half of that receivable shall be deemed to be distributed from the plans to Debtor during calendar year 1992. Any tax resulting from the distributions to Plaintiff or Defendant of their share of this note shall be their sole and separate responsibility.

5. The authorized liens on said properties shall be paid from respective sale proceeds of the properties.

However, Plaintiff shall have the exclusive right to determine the date, terms and manner of sale.

6. Any tax liability resulting from the transfer of the real properties described at paragraph 3, or as a consequence of any later transfer of said properties, shall be the responsibility of plaintiff. The intent of this provision is that the tax attributable to each property shall be the responsibility of the person or entity receiving the property. Regarding tax consequences of the distribution from the plans of the promissory note referred to in paragraph 4, above, each party shall cross indemnify the other from liability for taxes attributable to the 50% of the promissory note transferred to the indemnifying party and such liability for indemnity shall be non-dischargeable, in the nature of support. To the fullest extent allowed by law, the transfer to each party of a one-half interest in the promissory note shall be done to the best mutual tax advantage and minimum liability of each party.

For any acts, from the date of separation (July 21, 1988 per page 4 of the Judgment of Dissolution) forward, which acts trigger or are deemed to have triggered taxable events other than those specifically mentioned herein, the party performing the act or acts shall indemnify and hold harmless the other party from any and all taxes, penalties and interest resulting from such act or acts. This court shall retain jurisdiction to determine responsibility for any such liability.

7. Right, title and interest in the club mebership at Mission Hills Country Club shall be vested exclusively in Plaintiff. Plaintiff shall cooperate with Debtor so as to allow him, at his own cost and on a cash basis, to use the Mission Hills Country Club for social purposes only. Right, title and interest in the Balboa Bay Club membership shall vest exclusively in Debtor. Debtor shall cooperate with Plaintiff to allow Plaintiff to use the Balboa Bay Club membership for social purposes only and on a cash basis only.

8. In consideration of the above, spousal support shall be paid at the rate of $2,000 per month by Debtor to Plaintiff commencing August 1, 1992, and on the first of each month thereafter, for a period of 26 months, after which spousal support shall forever end and this order is not further modifiable. The parties acknowledge that $1,000 of each installment shall apply to overdue and unpaid spousal support. Upon the death of the Debtor or remarriage of Plaintiff, back-due support of $1,000 per month for the remainder of the 26-month term shall not be affected, but Debtor shall be relieved of the obligation to make the $1,000 future support portion of the payments from the date of death or marriage forward. Upon the death of Plaintiff, all support obligations shall cease. The insurance check from New York Life Insurance Company in the sum of $14,190.00, previously ordered to be issued and turned over to Plaintiff by the State Court, has been issued and turned over to Plaintiff. Such insurance funds are in addition to, and in no manner will affect or reduce the obligations to make support payments as contained in this paragraph. The spousal support payments described herein may not be accelerated absent prior written consent of Plaintiff. Plaintiff acknowledges that she has received all payments required to be paid to her under this paragraph through and including the payment due February 1, 1993.

9. On account of Plaintiff's attorneys' fees ordered by the Superior Court, Debtor shall pay, in addition to the sums required by paragraph 7, the sum of $1,000 per month commencing February 15, 1993 and continuing on the same day of each month thereafter for a period of ten months through November 15, 1993. Said payments as directed by Plaintiff shall be paid either to Plaintiff's divorce attorney or to Buchalter, Nemer, Fields & Younger's trust account, which counsel may release funds only to the Divorce Attorney or upon Plaintiff's direction, only upon tender to

Debtor of a full release of liability of Debtor by the Divorce Attorney. To secure said payments and to secure the indemnity for tax obligations attributable to the promissory note, and in addition to any other remedy Plaintiff may have, Debtor hereby stipulates to entry of a withholding order directed to New York Life Insurance Company to pay all amounts in arrears on the payments required by this paragraph directly to Plaintiff, which order Plaintiff may obtain by noticed motion to the Bankruptcy Court accompanied by her declaration as to the amounts of arrearage.

10. The parties agree that the property settlements herein resolve, complement and finalize the divisions and rights under the Marital Decree dated June 22, 1989.

11. Effective immediately, Dr. Nelson hereby resigns his position as Trustee of the Pension Plan and all rights and duties as Trustee shall vest in Plaintiff, solely and exclusively, from this date forward subject to terms set forth below. Plaintiff shall forthwith undertake any and all acts on behalf of the Pension Plan to implement the terms of this stipulation. Plaintiff will take the necessary steps to terminate the plans and will do so in a manner and at a time that is equitably in the mutual best interests of the parties, but in no event prior to 1992. Debtor will cooperate fully in signing and/or filing documents reasonably necessary to so implement the terms of this stipulation and the U.S. Bankruptcy Court reserves jurisdiction to determine the equities if a dispute arises and to enforce the terms of this paragraph.

12. As soon as is reasonably possible following execution of this stipulation, Plaintiff shall prepare all documents required to perfect the QDRO and submit copies of same to Debtor's counsel and the U.S. Bankruptcy Court for approval. Debtor's counsel shall approve or disapprove

same in writing within 10 days after receipt. If approved, Plaintiff shall further complete the process for perfection and have the administrator segregate all of the Plan's assets for Plaintiff's benefit. If disapproved, the U.S. Bankruptcy Court shall review the objection and document to determine whether a further hearing to resolve any dispute with respect to same is warranted. If Debtor's counsel fails to object within said 10 days, or if the Court either with or without a hearing so orders, Plaintiff shall proceed to file documents as necessary to complete the process of perfection and segregation.

13. Plaintiff shall remain beneficiary of Debtor's life insurance policy, as set forth in the Marital Decree, and Debtor shall have further responsibility to keep the policy in effect and to retain Plaintiff as beneficiary on the following schedule:

a. When all deeds to the real properties described above are executed by Debtor as directed by Plaintiff's counsel within 10 days and, along with any other deeds, delivered to Plaintiff's counsel, Plaintiff's beneficial interest in the insurance may be reduced by Debtor to $500,000. If Debtor is unable to deliver the court ordered deeds to Plaintiff's counsel, he shall obtain a letter of explanation from his dissolution attorney and file a declaration under penalty of perjury in accordance with the court's comments on February 11, 1993, including a statement that he does not have and cannot locate same.

b. When 18 installment support payments of $2,000 each have been paid to Plaintiff as required herein, then Plaintiff's beneficial interest in the insurance may be reduced to $250,000; and

c. Upon the later of (i) when all 26 support payments of $2,000 each plus the $1,000 in attorneys fees have been

paid as required herein or (ii) when all tax liability attributable to Debtor's one-half of the promissory note is resolved, then Plaintiff's beneficial interest in the insurance may be cancelled. If all support payments have been made, Plaintiff is entitled to be kept as beneficiary only in an amount equal to Debtor's remaining tax liability as described in this paragraph.

14. The United States Bankruptcy Court shall reserve jurisdiction to implement all terms of this Stipulation, excepting only the enforcement of spousal support, which shall remain with the State Court. This may include execution of clerk's deeds, as necessary. Further, if legal challenges are mounted by the IRS or any other taxing or government agency, the court reserves jurisdiction to make such other and further orders, which may include further orders regarding payment of professional fees and costs, as equity and circumstances dictate. Except as modified herein, or otherwise affected by Debtor's discharge, all other provisions of the Marital Decree, except any provisions related to the four properties, or any credits thereof, shall remain in full force and effect.

15. The parties shall cooperate in executing such documents as are reasonably necessary to accomplish the terms of this Stipulation, and to cooperate in arranging transfers of properties and proceeds so as to minimize taxable gain to the parties or Pension Plan. Further, Debtor shall cooperate in making all records in his possession or subject to his control regarding the Pension Plan available to Plaintiff and shall further cooperate in requesting that lawyers previously involved, such as Best, Best & Krieger, make their records also available to Plaintiff.

Plaintiff contends that a $205,000 loan made to Debtor before the date of separation was made for business purposes from her separate property. Said loan, although mentioned in the Marital Decree, has now been discharged and rendered

valueless in 1992 by reason of this Stipulation. Nothing contained herein shall in any manner be construed as obliging Debtor for payment of said loan, that it has been discharged in this proceeding.

16. Except for obligations hereunder, Plaintiff on the one hand, and Debtor on the other, and on behalf of the Pension Plan or as trustees of the Pension Plan, release the other, from any and all claims and causes of action, whether known or unknown, concerning, arising in or related to, the Debtor's bankruptcy, the divorce or the Marital Decree only ("the Released Claims"). With respect to the Released Claims, each party acknowledges the provisions of Civil Code §1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

With respect to the Released Claims the parties each waive any benefit or recourse they might otherwise enjoy under Civil Code §1542.

17. This Stipulation is intended as a global settlement of all property and spousal support issues incident to divorce. The transfers of properties under this Stipulation is intended as a modification within six years after the date of marriage termination and, is intended to qualify as a property transfer related to the ending of the marriage as provided in the Internal Revenue Code so that no gain or loss is to be recognized by either party on the transfer, to the fullest extent permitted by law.

18. In the event of any action or proceeding to enforce or interpret any provision of this Stipulation, including the collection of spousal support, the prevailing party shall be entitled to attorneys' fees.

19. Debtor warrants that from the date of the Marital Decree to the present that he has not, and will not in future, transfer or hypothecate title to any properties referenced herein except as expressly permitted by this Stipulation, whether in his personal capacity or in his capacity as trustee of the Pension Plan. Debtor further warrants that there are no other assets or liabilities of the Pension Plan except as provided herein. The parties warrant, that to the best of their knowledge, there are no other assets or liabilities of the Pension Plan except as provided herein.

20. The parties are each enjoined from any misconduct such as using or manipulating tax laws in a manner calculated to increase unnecessarily the tax or other burdens on the other party. The court retains the jurisdiction to deal with any such misconduct not in keeping with either the letter or spirit of this Stipulation by the imposition of sanctions, as appropriate.

Dated: February 26, 1993 s/ Ralph G. Nelson, M.D.
Ralph G. Nelson, M.D. ("Debtor")

Dated: February 11, 1993 Hanover & Schnitzer
By: s/George Hanover
George Hanover
Attorney for Ralph G. Nelson, M.D., Debtor

February 11, 1993
~~March~~
Dated: ~~February 31~~, 1993 s/ Edna Nelson

Edna Nelson, Plaintiff

Dated: as of February 11, 1993
Buchalter Nemer, Fields & Younger
A Professional Corporation

By s/Theodor C. Albert
Attorneys for Plaintiff, Edna Nelson

ORDER

It is so ordered,

DATED: APR 29 1993 s/MITCHEL R. GOLDBERG
Mitchel R. Goldberg
United States Bankruptcy Judge

Edna Louise Nelson
2245 Gene Autry Trail, #E
Palm Springs, California 92264
Telephone: (619) 770-3653
In Propria Persona

FILED
JUN –7 1995

ENTERED
JUN -8 1995
Clerk U.S. Bankrutcy Court
Central District of California
By Deputy

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CASE NO: SB 91-19414 MG
	)
Ralph Gilbert Nelson,	) Chapter 7
	)
Debtor.	) Adv. No. SB 91-1580 MG
	)
	) Order Reopening Closed
	) Adversry Case
Edna L. Nelson,	) No. SB 91-1580 MG
	) On Movant Edna L. Nelson's
Plaintiff,	) Motion to Reopen
	) Adversary Case
vs.	)
	)
Ralph Gilbert Nelson,	) Date: May 23, 1995
	) Time: 3:00 p.m.
Defendant.	) Courtroom : #3, 2nd Floor

At San Bernardino, in said district, this 23rd day of May, 1995.

Upon the motion of Edna L. Nelson ("Movant"), a creditor of said debtor, filed herein on March 24, 1995, to reopen the said Adversary Case, which was closed by order of the Court on August 5, 1993, and cause therefor appearing in that Movant has good cause to reopen said Adversary Case in order for Movant to raise issues in areas under the

Stipulation to Judgment and Order thereon entered April 30, 1993 in which the Court retained jurisdiction.

The motion was based on the Notice of Motion, Motion, Memorandum of Points and Authorities, Supporting Declaration of Movant, filed on March 24, 1995; Opposition Papers filed by attorney for Debtor on April 12, 1995 and Movant's Reply to Debtor's opposition presented to the Court at hearing on April 25, 1995; and supporting Declaration thereon; and oral arguments made at hearings on April 25, 1995 and May 23, 1995. All creditors reasonably expected to be affected were duly noticed of the motion. Movant appeared for herself in persona and George Hanover appeared for debtor Ralph Gilbert Nelson at hearings on April 25, 1995 and May 23, 1995. No other persons appeared at the hearings.

Ordered that Adversary Case No. SB 91-1580 MG in Bankruptcy Case No. SB 91-19414 MG of said Ralph Gilbert Nelson, debtor, be, and the same hereby is, reopened for the purpose that Movant Edna L. Nelson can raise issues in areas, as set forth on the record, pursuant to ~~under~~ the Stipulation to Judgment and Order thereon entered April 30, 1993 in which the Court retained jurisdiction.

Dated: May 24, 1995

By s/ Edna L. Nelson
Edna L. Nelson
Movant, In Propria Persona
2245 Gene Autry Trail, #E
Palm Springs, Ca 92264
(619) 770-3653

ORDER

It is so ordered.

DATED: JUN-7 1995

s/ MITCHEL R. GOLDBERG
MITCHEL R. GOLDBERG
United States Bankruptcy Judge

Edna Louise Nelson
2245 Gene Autry Trail, #E
Palm Springs, California 92264
Telephone: (619) 770-3653
In Propria Persona

ENTERED
JUN 12 1995
Clerk U.S. Bankrutcy Court
Central District of California
By Deputy

FILED
JUN –7 1995

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CASE NO: SB 91-19414 MG
	) CHAPTER 7
Ralph Gilbert Nelson,	)
	) Order Reopening Closed
Debtor.	) Bankruptcy Case
	) No. SB 91-19414 MG
	) On Creditor Edna L. Nelson's
Edna L. Nelson,	) Motion To Reopen
	) Bankruptcy Case
Movant,	)
	) Date: May 23, 1995
vs.	) Time: 3:00 p.m.
	) Courtroom: #3, 2nd Floor
Ralph Gilbert Nelson, Debtor,	)
Karl T. Anderson, Trustee	)
	)
Respondents.	)
	)

At San Bernardino, in said district, this 23rd day of May, 1995.

Upon the motion of Edna L. Nelson ("Movant"), a creditor of said debtor, filed herein on March 24, 1995, to reopen the estate of debtor, which was closed by order of the Court on March 7, 1994, and cause therefor appearing in that Movant has good cause to reopen said estate so that Adversary Case No. SB 91-1580 MG can be reopened in

order for Movant to raise issues in areas under the Stipulation to Judgment and Order thereon entered April 30, 1993 in which the Court retained jurisdiction.

The motion was based on the Notice of Motion, Motion, Memorandum of Points and Authorities, Supporting Declaration of Movant, filed on March 24, 1995; Opposition Papers filed by attorney for Debtor on April 12, 1995 and Movant's Reply to Debtor's opposition presented to the Court at hearing on April 25, 1995; and supporting Declaration thereon; and oral arguments made at hearings on April 25, 1995 and May 23, 1995. All creditors reasonably expected to be affected were duly noticed of the motion. Movant appeared for herself in persona and George Hanover appeared for debtor Ralph Gilbert Nelson at hearings on April 25, 1995 and May 23, 1995. No other persons appeared at the hearings.

Ordered that the estate of said Ralph Gilbert Nelson, debtor, be, and the same hereby is, reopened for the purpose of reopening Adversary Case No. SB 91-1580 MG so that Movant Edna L. Nelson can raise issues, as set forth on the record, pursuant to ~~in areas under~~ the Stipulation to Judgment and Order thereon entered April 30, 1993 in which the Court retained jurisdiction.

Dated: May 24, 1995

By s/ Edna L. Nelson
Edna L. Nelson
Movant, In Propria Persona
2245 Gene Autry Trail, #E
Palm Springs, Ca 92264
(619) 770-3653

ORDER

It is so ordered.

DATED: JUN-7 1995

s/ MITCHEL R. GOLDBERG
MITCHEL R. GOLDBERG
United States Bankruptcy Judge

NICHOLS & ANDREWS
A Professional Corporation
22992 Mill Creek Drive, Suite B
Laguna Hills, California 92653-1219
Telephones
(714) 458-3800
(714) 458-2064
Camilla N. Andrews (SBN: 126143)
Attorneys for Bank of America, NTS&A

FILED
JAN-4 1996

ENTERED
JAN-5 1996
Clerk U.S. Bankrutcy Court
Central District of California
By Deputy

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CASE NO: SB 91-19414 MG
	) CHAPTER 7
Ralph Gilbert Nelson,	)
	) Adv. Proc. SB 95-1438 MG
Debtors.	)
_____	) Order granting Bank of
	) America and Citizens Federal
Edna L. Nelson,	) Banks motion to dismiss with
	) prejudice
Plaintiff,	)
	) Date: November 28, 1995
vs.	) Time:2:00 p.m.
	) Ctrm: 3
Bank of America, N.T.&S.A.,)	
Citizens Federal Bank, et al.,)	
)	
Defendants.	)
_____	)

On November 28, 1995 at 2:00 p.m. a hearing was held on the Motions to Dismiss filed by Bank of America, N.T. & S.A. and Citizens Federal Bank against Plaintiff.

Plaintiff, Edna L. Nelson appeared pro se, Debtor Ralph Nelson appeared by and through his attorneys of record The Law Offices of George Hanover, Defendant Citizens Federal Bank appeared by and through its attorneys of record Morrison & Foerster, and Bank of America appearing by and through its attorneys of record Nichols & Andrews.

Having considered the Motion, supporting evidence, Plaintiff's opposition, and oral argument at the hearing, and based on the court's Findings of Fact and Conclusions of Law:

IT IS ORDERED that the Motions to Dismiss filed by Defendants Bank of America, N.T. and Citizens Federal Bank with respect to Plaintiff's Complaint regarding the real property commonly known as 40-941 Tonapah Road, Rancho Mirage, California and legally described as Lot 13 of Thunderbird Heights as No. 1, as per map Recorded in Book 32, Page 68 of Maps, in the Office of the County Recorder of Said County (hereinafter the "subject real property") are hereby granted with prejudice on the following grounds:

1. There was no willful violation of automatic stay of 11 U.S.C. 362(h) based on the fact that relief from stay was granted as to Bank of America to conduct its foreclosure sale as to the subject real property.

2. Further, that Plaintiff's 11 USC §362(h) claim ~~action~~ is barred by laches as it relates to the foreclosure sale of the subject real property in that Plaintiff failed to appear before this court prior to the foreclosure sale; ~~and in fact chose the forum of Riverside Superior Court in an attempt to halt the sale;~~

3. Further, the court does not address the issue of standing based on the fact that Dismissal is warranted on the merits which failed to disclose any violation of 11 U.S.C. §362(d); and

4. ~~Plaintiff's action is further barred by the doctrine of laches in that the foreclosure sale was conducted on April 16, 1993 and Plaintiff's adversary action was not filed until August 10, 1995.~~

DATED: JAN-4 1996

s/ MITCHEL R. GOLDBERG
Judge of the Bankruptcy Court

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Camilla N. Andrews (SBN: 126143)
Attorneys for Bank of America, NTS&A

FILED
JAN-4 1996

ENTERED
JAN-5 1996
Clerk U.S. Bankruptcy Court
Central District of California
By Deputy

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CASE NO: SB 91-19414 MG
	) CHAPTER 7
Ralph Gilbert Nelson,	)
	) Adv. Proc. SB 95-1438 MG
Debtors.	)
_____	) ~~Proposed~~] Findings of Fact
	) and conclusions of law re
Edna L. Nelson,	) order granting motion to
	) dismiss with prejudice
Plaintiff,	) plaintiff's complaint with
	) respect to defendants Bank of
vs.	) America, N.T.&S.A. and
	) Citizens' Federal Bank
Bank of America, N.T.&S.A.,)	
Citizens Federal Bank, et al.,)	
	) Date: November 28, 1995
Defendants.	) Time: 2:00 p.m.
_____	) Ctrm: 3

The Court's granting of Defendants Bank of America, N.T. & S.A.'s and Citizens Federal Bank's Motions to

Dismiss which came on for hearing November 28, 1995, at 2:00 p.m. in Courtroom 3 of the above referenced court is based on the following findings of fact.

1. On April 30, 1986, Debtor and Plaintiff executed a Note and Deed of Trust in favor of Bank of America on the real property commonly known as 90-941 Tonapah Road, Rancho Mirage, California and legally described as Lot 13 of Thunderbird Heights as No. 1, as per map Recorded in Book 32, Page 68 of Maps, in the Office of the County Recorder of Said County (hereinafter the "subject real property").

2. Debtor and Palintiff defaulted on the loan in January 1991.

3. On July 28, 1992, an Order was entered in Debtor's bankruptcy granting Bank of America, N.T. & S.A. relief from the automatic stay to foreclose on the subject real property.

4. On October 13, 1992, Bank of America caused to be filed a Notice of Default and Election to Sell Under Deed of Trust. Said Notice of Default was recorded with the Riverside County Recorder's Office on October 13, 1992, Instrument No. 383068.

5. On or about March 1, 1993, Bank of America caused to be recorded with the Riverside County Recorder a Notice of Trustee's Sale, Instrument No. 075028 which noticed a sale of the subject real property for March 23, 1993.

6. On March 22, 1993, Plaintiff filed an action in Riverside Superior Court, case number 231959, entitled Edna Louise Nelson v. Bank of America, N.T. & S.A., Citizens Federal Bank, a Federal Savings Bank, et al.

7. On March 23, 1993, the Riverside Superior Court issued a Temporary Restraining Order enjoining the pending foreclosure sale on the subject real property.

8. On April 7, 1993, the Riverside Superior Court denied Plaintiff's Motion for Preliminary Injunction to enjoin the foreclosure sale on the subject real property.

9. A foreclosure sale was conducted on April 16, 1993.

10. On April 20, 1993, a Notice of Trustee's Deed Upon Sale was recorded with the Riverside County Recorder, Instrument No. 145214 on the subject real property.

11. On August 10, 1995, Plaintiff Edna L. Nelson filed an Adversarial Action number SB 95-1439 MG under 11 U.S.C. 362(h) for statutory violations of the automatic stay with respect to the subject real property.

Based on these Findings of Facts and Conclusions of Law, the court finds there was no malicious or willful ~~interference by either Bank of America or Citizens Federal Bank with respect to Plaintiff's rights on the subject real property, nor any~~ violation of 11 U.S.C. §362(h) and in the alternative, Plaintiff's action is barred by the doctrine of laches.

These Findings of Fcats and Conclusions of Law are based on the documents submitted in support of and in opposition to the Motions to Dismiss filed by Defendants Bank of America, N.T. & S.A. and Citizens Federal Bank with respect to Plaintiff's Complaint regarding the subject real property of which the court was requested to take judicial notice.

DATED: JAN-4 1996 s/MITCHEL R. GOLDBERG
Judge of the Bankruptcy Court

FILED
Clerk, U.S. District Court
OCT 21 1996
Central District of California
By Deputy

ENTERED
Clerk, U.S. District Court
OCT 25 1996
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CV 96-1555 JSL
	)
Ralph Gilbert Nelson,	) Order Affirming Decision of
	) Bankruptcy Court
Debtor.	)
	)
Edna Louise Nelson,	) Bankruptcy Case No.
	) SB 91-19414 MG
Plaintiff-Appelant,	)
	) Adversary Proceeding No.
v.	) SB 95-01438 MG
	)
Bank of America, N.T.&S.A., Citizens Federal Bank,	) This Constitutes Notice of Entry as Required by FRCP, Rule 77(d)
Defendants-Appellees.	)

Edna Louise Nelson's appeal from an order of the United States Bankruptcy Court, Central District of California dismissing her claims in adversary proceeding

against defendants Bank of America National Trust and Savings Association and Citizens Federal Bank was decided without hearing on October 17, 1996.

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the Order of the Bankruptcy Court dismissing appellant's claims be AFFIRMED. The Court may amend or amplify this order with a more specific statement of the grounds for its decision.

IT IS SO ORDERED.

Dated: 10/21/96

s/ J. Spencer Letts
J. Spencer Letts
United States District Judge

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

ENTERED	FILED
Clerk, U.S. District Court	Clerk, U.S. District Court
JAN 14 1999	JAN 11 1999
Central District of California	Central District of California
By Deputy	By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CV 96-1555 JSL
	)
Ralph Gilbert Nelson,	) Amended Order Affirming
	) Decision of Bankruptcy
Debtor.	) Court
_____	)
Edna Louise Nelson,	)
	) Bankruptcy Case No.
Plaintiff-Appelant,	) SB 91-19414 MG
	)
v.	) Adversary Proceeding No.
	) SB 95-01438 MG
Bank of America National	)
Trust & Savings Association,	)
Citizens Federal Bank,	)
	)
Defendants-Appellees.	)
_____	)

Edna Louise Nelson's appeal from an order of the United States Bankruptcy Court, Central District of California dismissing her complaint in adversary proceeding against defendants Bank of America National Trust and Savings Association and Citizens Federal Bank was decided without hearing on October 17, 1996.

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the Order of the Bankruptcy Court dismissing Appellant's claims be AFFIRMED.

IT IS SO ORDERED.

Dated: January 11, 1999

s/ J. Spencer Letts
J. Spencer Letts
United States District Judge

ENTERED
Clerk, U.S. District Court
DEC – 2 1996
Central District of California
By Deputy

FILED
Clerk, U.S. District Court
NOV 25 1996
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CV 96-1555 JSL
	)
Ralph Gilbert Nelson,	) Order Denying Plaintiff-
	) Appellant's Motion to Alter
Debtor.	) or Amend Judgment
	)
Edna Louise Nelson,	)
	) Bankruptcy Case No.
Plaintiff-Appelant,	) SB 91-19414 MG
	)
v.	) Adversary Proceeding No.
	) SB 95-01438 MG
Bank of America, N.T.&S.A.,)	
Citizens Federal Bank,	)
	)
Defendants-Appellees.	)
	)

The motion of plaintiff-appellant Edna Louise Nelson to alter or amend this Court's Order of October 24, 1996, affirming the Order of the Bankruptcy Court, was decided without hearing on November 20, 1996. Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law, IT IS HEREBY ORDERED that the motion of plaintiff-appellant be

DENIED. The Court may amend or amplify this order with a more specific statement of the grounds for its decision.

IT IS SO ORDERED.

Dated: 11/25/96

s/ J. Spencer Letts
J. Spencer Letts
United States District Judge

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

ENTERED
Clerk, U.S. District Court
JAN 25 1999
Central District of California
By Deputy

FILED
Clerk, U.S. District Court
JAN 19 1999
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re:	) CV 96-1555 JSL
	)
Ralph Gilbert Nelson,	) Amended Order Denying
	) Plaintiff-Appellant's
Debtor.	) Motion To Alter Or Amend
	) Judgment
Edna Louise Nelson,	)
	)
Plaintiff-Appelant,	) Bankruptcy Case No.
	) SB 91-19414 MG
v.	)
	) Adversary Proceeding No.
Las Palmas Professional	) SB 95-01438 MG
Center Inc., et al.,	)
	)
Defendants-Appellees.	)

The motion of plaintiff-appellant Edna Louise Nelson to alter or amend this Court's Order of October 24, 1996, affirming the Order of the Bankruptcy Court, was decided without hearing on November 20, 1996.

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the motion of plaintiff-appellant be DENIED.

IT IS SO ORDERED.

Dated: 1/19/99

s/ J. Spencer Letts
J. Spencer Letts
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: Ralph Gilbert Nelson Debtor.	FILED SEP-7 1999
Warren J. Michaels, executor of the estate of Edna Louise Nelson, Plaintiff-Appelant, v. Bank of America, National Trust & Savings Association, a national banking association, Citizens Federal Bank, a federal savings bank, Defendants-Appellees.	Cathy A. Catterson, Clerk U.S. Court of Appeals No. 96-56822 D.C. No. CV 96-01555-JSL ORDER

Before: Brunetti, Rymer, and Silverman, Circuit Judges.

The panel has unanimously voted to deny the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on the petition for rehearing en banc. Fed.R.App.P. 35.

The petition for rehearing en banc is DENIED.

Constitution of the United States
Article I, Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.

Constitution of the United States
Article I, Section 8, Clause 4

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Constitution of the United States
Article I, Section 8, Clause 18

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Constitution of the United States
Article III, Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ***

Constitution of the United States
Article III, Section 2, Clause 1

The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, ***

Constitution of the United States
Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Constitution of the United States
Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; *** shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Constitution of the United States
Amendment V

No person ***, nor be deprived of life, liberty, or property, without due process of law; ***

United States Code
Title 11, Section 105, Subsection a

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

United States Code
Title 11, Section 350, Subsection b

A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

United States Code
Title 11, Section 362, Subsection a

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, *** operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, ***

(4) any act to create, perfect, or enforce any lien against property of the estate;

United States Code
Title 11, Section 362, Subsection c

Except as provided in subsection (d)(e) and (f) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; ***

United States Code
Title 11, Section 362, Subsection d

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; ***

United States Code
Title 11, Section 362, Subsection h

An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

United States Code
Title 11, Section 541, Subsection a

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

****

United States Code
Title 28, Section 157

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to –

(A) matters concerning the administration of the estate;

(G) motions to terminate, annul, or modify the automatic stay;

(K) determinations of the validity, extent, or priority of liens;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security relationship, except personal injury tort or wrongful death claims.

United States Code
Section 455

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(c) A judge should inform himself about his personal and fiduciary financial interests, ***

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1)"proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(4) "financial interest" means ownership of a legal or equitable interest, however small, ***

(f) Notwithstanding the proceeding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor children residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

United States Code
Former Title 28, Section 1334
(Under 1948 ACT)
(80th Congress, 2d Session–Chapter 646-June 25, 1948)
United States Statutes At Large
Volume 62 , Page 931

The district courts shall have original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy.

United States Code
Title 28, Section 1334

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under this subsection (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

United States Code
Title 28, Section 2283

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Federal Rules of Civil Procedure
Rule 60(b)

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been revised or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, ***

Federal Rules of Bankruptcy Procedure
Rule 2004(a)

On motion of any party in interest, the court may order the examination of any entity

Federal Rules of Bankruptcy Procedure
Rule 5004(a)

A bankruptcy judge shall be governed by 28 U.S.C. §455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case.

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November 2, 1992

Edna Louise Nelson
2245 Gene Autry Trail #E
Palm Springs, California 92264

Re: Bank of America v. Ralph Nelson
Case No: SB 91-19414 MG
Our File No: BOFO-4019

Dear Mrs. Nelson:

In response to your letter dated October 29, 1992, you were not noticed with our Motion for Relief from Stay as our records did not indicate that you were to be noticed with any Motion for Relief. However, we do not understand your contention that Bank of America is acting as an agent for an undisclosed principal.

Very truly yours,

Agapay, Levin & Halling
A Professional Corporation

s/ Glen R. Segal
Glen R. Segal

GRS:

Citizens Federal Bank
A Federal Savings Bank
1100 W McNab Road, Ft Lauderdale, FL 33309
Telephone (305) 979-6600

December 24, 1992

Mr. Warren J. Michaels
1235 A Route 23 South
Wayne, NJ 07474

RE: Edna Louise Nelson
Loan #2832208

Dear Mr. Michaels:

Per your request, please accept this letter as acknowledgement that Citizens Federal Bank is the current noteholder on the above referenced loan.

As previously indicated to you in my December 4, 1992 letter, Citizens purchased this note from Bank of America on January 15, 1987.

Please advise if I may be of further assistance.

Sincerely,

S/ Mario Garcia
Mario Garcia
Vice President
Default Administration

MG/jcs

Christofer Chapam, Esq. (SBN 153186)
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FILED
Riverside County
MAR 15 1995
Arthur A. Sims, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Edna Louise Nelson, an individual,	CASE NO: 23 19 59
Plaintiff,	Order On Ralph Gilbert Nelson's Motion For Summary Judgment; Judgment
vs.	
Bank of America, a national Banking association; Citizens Federal Bank, a federal savings bank; Ralph Gilbert Nelson, an individual; and DOES 1 through 200, Inclusive,	
Defendants.	

The motion for summary judgment of defendant Ralph Gilbert Nelson was heard on January 18, 1995. The plaintiff Edna Louise Nelson appeared in propria persona. Cooksey, Howard, Martin & Toolen by Christofer Chapman appeared on behalf of Ralph Gilbert Nelson.

Having considered all the evidence set forth in the papers submitted, and the inferences reasonably deducible

therefrom, the Court determines that there is no triable issues as to any material fact and that defendant Ralph Gilbert Nelson is entitled to judgment as a matter of law for the following reasons:

1. Plaintiff's entire complaint is barred by the doctrines of res judicata and collateral estoppel. The issues and causes of action raised in plaintiff's complaint either were raised or could have been raised in the prior bankruptcy proceeding in which a stipulation to judgment was entered as a judgment between these two parties prior to the commencement of this action.

2. Plaintiff's entire complaint is barred by the release provisions contained in the stipulation to judgment signed and entered into by both the plaintiff and defendant in the bankruptcy proceedings prior to commencement of this action.

3. The plaintiff submitted a declaration and voluminous documentary evidence in opposition. The Court considered all evidence submitted by the plaintiff.

4. The evidence submitted by the plaintiff does not establish the existence of any triable issues of material fact.

5. The evidence submitted by defendant Ralph Gilbert Nelson that none of the six causes of action asserted in the complaint have any merit.

Accordingly, IT IS ORDERED, that defendant Ralph Gilbert Nelson's motion for summary judgment be, and is hereby, granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff take nothing by her complaint against Ralph Gilbert Nelson. Ralph Gilbert Nelson may recover costs and attorney's fees in accordance with C.C.P. Sections 1021, 1032 and 1033.5, Civil Code Section 1717, and C.R.C. 870 and 870.2.

Dated: 3/15/95

s/ Dennis McConaghy
Dennis McConaghy
Judge of the Superior Court

Supreme Court, U.S.
FILED
JAN 31 2000
CLERK

(3)

No. 99-978

IN THE

Supreme Court of the United States

WARREN J. MICHAELS, Executor of the Estate of EDNA L. NELSON, Deceased,

Petitioner,

v.

BANK OF AMERICA, N.A.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioner Warren J. Michaels, Executor of the Estate of Edna L. Nelson, substituted in as plaintiff and appellant in place of Edna Nelson on June 24, 1999, after Edna L. Nelson died.

Respondent Citizens Federal Bank was acquired by NationsBank Corp. in 1996, and NationsBank merged with Respondent Bank of America, N.T. & S.A. in 1999 to form Bank of America, N.A., a national association.

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INTRODUCTION

As servicing agent for Citizens Federal Bank, Bank of America instructed the trustee under a deed of trust to foreclose on real property owned by Ralph and Edna Nelson, at a time when the couple had divorced and Ralph Nelson was in bankruptcy. Bank of America obtained relief from the automatic stay, the trustee foreclosed, and Citizens purchased the property at the sale. The crux of Edna Nelson's complaint is that Bank of America perpetrated a fraud by obtaining relief from the automatic stay in her ex-husband's bankruptcy case when Citizens was the beneficiary under the deed of trust and should have obtained the relief itself. Until more than two years after the foreclosure sale, she never denied that the loan was made or that the payments were in arrears. She misreads the Trustee's Deed Upon Sale to state that Citizens foreclosed on the property when it names Citizens only as the purchaser. Since 1993, Nelson has engaged Bank of America and Citizens Federal Bank in protracted litigation in both state and federal courts, when the best result she could ever hope for would be a result permitting the other entity to foreclose. She did not appeal the state court judgment which found the lien valid and enforceable. This appeal stems from a subsequent Bankruptcy Court adversary case judgment in which the court found that res judicata and collateral estoppel barred Nelson's Complaint, as well as laches. Certiorari should be denied.

STATEMENT OF THE CASE

In November of 1991, Edna Nelson ("Nelson") filed an adversary complaint against her ex-husband Ralph Nelson in his Chapter 7 bankruptcy proceeding. The banks were not parties. (Petn 5)[1] To settle the complaint, in February of 1993 they stipulated that Nelson was awarded certain real property, including the Tonapah Residence (aka "Lot 13," the subject of the within Petition), subject to existing liens, and Nelson reserved the right to contest any liens on the property. (App 08-22) Bank of America had loaned money to the Nelsons secured by a trust deed on Lot 13 which it assigned to Citizens Federal Bank in 1986, and Bank of America serviced the loan. (BA's ER 39) Its Servicing Agreement with Citizens required Bank of America to foreclose on security for seriously delinquent loans. (BA's ER 111-112) Bank of America obtained relief from the automatic stay in Ralph Nelson's bankruptcy on July 28, 1992, on the grounds there was no equity in the property and for lack of adequate protection. (Nelson's ER 111-112) The foreclosure sale was set for March 23, 1993. (App 31)

Although Nelson knew in July of 1992 that Bank of America had obtained relief from the automatic stay to foreclose (Petn 6), Nelson waited until the day before the foreclosure sale, March 22, 1993, to challenge the lien. She filed a Riverside County Superior Court Complaint, alleging that the Banks and her ex-husband conspired to have him

---

1. "Petn" refers to Michaels' Petition for Writ of Certiorari. "App" refers to Michaels' Appendix to Petition for Writ of Certiorari. "ER" refers to Appellant's Excerpts of Record filed in the Ninth Circuit Court of Appeals, No. 96-56822. "BA's ER" refers to Bank of America's and Citizens Federal Bank's Excerpts of Record filed in the Ninth Circuit appeal.

default on the loan and cause the foreclosure, and alleged that neither bank was the beneficiary under the trust deed. (BA's ER 00-37) Nelson initially obtained a temporary restraining order postponing the foreclosure sale, but days later the Superior Court denied Nelson's motion for preliminary injunction to enjoin the foreclosure sale, and the sale went forward on April 16, 1993. (App 31) Ralph Nelson's bankruptcy proceeding was closed March 7, 1994. (Petn 10) On February 16, 1995, the Superior Court granted Bank of America's motion for summary judgment as to Nelson's Complaint, finding that it had no merit. (BA's ER 38-41) Nelson did not appeal the judgment.

Nelson claims at this time (December 1994) she became aware that she was not at the closing of the escrow on Lot 13 and thus the deed did not contain her signature. (9th Cir. AOB 29) Nelson then reopened her ex-husband's bankruptcy proceeding and filed an adversary complaint against the respondent banks (Adv. No. SB-95-01438-MG), *again* alleging that Bank of America had no right to foreclose, on the theory that Bank of America claimed to be the beneficiary when Citizens was actually the beneficiary, and that her signature was forged. (ER 39) The Bankruptcy Court granted the banks' motions to dismiss the adversary case on the alternative grounds that there was no malicious or willful violation of the stay and that Nelson's action was barred by laches for her failure to challenge the lien prior to the foreclosure sale. (App 27-32)

The District Court affirmed the Bankruptcy Court's decision. (App 33-36) The Ninth Circuit affirmed on the grounds of res judicata and collateral estoppel (based upon the Superior Court judgment), and because Nelson's estate had no interest in the property once it was foreclosed upon

and sold, so her estate could not maintain the action to determine the extent of the lien. (App 1-2)

Before the Ninth Circuit's memorandum decision issued, Nelson moved for summary disposition of her appeal based on a motion she had just filed in the Bankruptcy Court to disqualify bankruptcy court Judge Mitchel Goldberg, which had not yet been decided. (App 3) Shortly thereafter, the Bankruptcy Court (by a different judge) denied Nelson's motion to disqualify the judge, and Nelson did not appeal the order. The Ninth Circuit denied Nelson's motion for summary disposition. Nelson (through Michaels) filed a Petition for Rehearing and Suggestion for Rehearing *En Banc*, which also was denied.

THE QUESTIONS PRESENTED DO NOT RAISE IMPORTANT QUESTIONS SUFFICIENT TO JUSTIFY GRANTING THE PETITION.

Rule 10 of the Rules of the Supreme Court of the United States provides, "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons."

No compelling reasons exist to grant the petition in this case. The petition does not raise any important federal questions, constitutional questions, or conflicts to resolve, nor was there any error by the courts below.

A. Res Judicata and Collateral Estoppel Bar Nelson's Federal Court Challenges to the Bank's Right to Foreclose.

In two successive court actions, Nelson challenged Bank of America's right to foreclose, the first in the state Superior Court and the second in the Bankruptcy Court adversary action. Because the Superior Court found the lien valid, and that judgment is final and unappealed, the second action is barred by reason of res judicata and collateral estoppel, as the Ninth Circuit correctly held. *First National Bank v. Russell (In re Russell)*, 76 F.3d 242, 245 (9th Cir. 1996). No reason exists for this Court to review this ruling.

B. Nelson and Her Estate Lack Standing to Challenge the Bank's Lien.

The Ninth Circuit also correctly determined that since Lot 13 was properly foreclosed upon and sold to a third party, Nelson's estate had no interest in the property and no right to contest the Bank's lien. (App 2; ER 39) Also, as a mere creditor of the debtor, Nelson lacked standing to attack violations of the automatic stay. *Tilley v. Vucurevich (In re Pecan Groves of Arizona)*, 951 F.2d 242, 245 (9th Cir. 1991). The type of relief Nelson sought is properly vested only in two parties, a bankruptcy trustee or a debtor in possession. *Magnoni v. Globe Inv. & Loan Co., Inc. (In re Globe Inv. & Loan Co., Inc.)*, 867 F.2d 556, 559-560 (9th Cir. 1989).

It also appears the Bankruptcy Court lacked jurisdiction to hear Nelson's adversary complaint against the Banks since Lot 13 had passed outside of the Bankruptcy Court's jurisdiction when the parties stipulated that Lot 13 would belong to Nelson subject to the lien, and the property was

sold in the foreclosure sale. *Matter of Edwards*, 962 F.2d 641, 643 (7th Cir. 1992); *Great Western Savings v. Gordon (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988).

C. The Bankruptcy Judge Did Not Lack Jurisdiction to Order Relief from Stay Based on his Alleged Ownership of Stock.

Petitioner alleges the bankruptcy judge lacked jurisdiction to order relief from stay because he allegedly owned stock in the "movant" or "respondents." (Petn 1, 3) Petitioner's moving papers assert the judge owned 50 or 80 shares of stock in BankAmerica Corp., the *parent* entity of movant Bank of America, N.T. & S.A., and in NationsBank Corp., which later acquired Citizens Federal Bank *after* the order granting relief from stay. Petitioner's motion to disqualify the judge was denied (by a disinterested judge), and Petitioner did not appeal that order. (9th Cir. Petn. for Rhrg. p. 4 and App 26)

The issue was not properly before the Ninth Circuit since Nelson did not appeal the Bankruptcy Court order denying her motion to disqualify the judge, nor raise the issue in her briefs on the merits at any level prior to the within Petition for Writ of Certiorari. *Allen v. Old National Bank of Washington (In re Allen)*, 896 F.2d 416, 418 (9th Cir. 1990) (per curiam); 28 U.S.C. § 158(a) and (d); *United States v. Washington*, 573 F.2d 1121, 1123 (9th Cir. 1978). Therefore, the issue is not properly before this Court either. *National Collegiate Athletic Assn. v. Smith*, 525 U.S. 459, 119 S.Ct. 924, 930 (1999).

Second, Nelson was not the debtor. She had no standing to contest the relief from stay order. *Tilley v. Vucurevich, supra*, 951 F.2d 242, 245.

Third, laches bars Petitioner's claim since relief from stay was ordered on July 28, 1992, and Nelson did not raise this argument until 1997, when briefing was finished in the Court of Appeals. *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 868, 108 S. Ct. 2194, 2206-2207 (1988). Nelson received the judge's disclosure reports on or about December 30, 1995. (Nelson's Declaration in Support of Motion for Disqualification of Judge Goldberg, p. 10, ¶ 47, attached to 9th Cir. Request for Judicial Notice.) Further, a one-year limitations period applies to motions to vacate an order under Federal Rules of Civil Procedure Rule 60(b) based on mistake, inadvertence, surprise, or excusable neglect.

Finally, the bankruptcy judge was not without jurisdiction even if he did own the stock. Rather, once a judge *has* disqualified himself, he or she may enter no further orders in the case. *Arnold v. Eastern Airlines, Inc.*, 712 F.2d 899, 904 (4th Cir. 1983); *Stringer v. United States*, 233 F.2d 947, 948 (9th Cir. 1956). The authority Petitioner cites, *Moody v. Simmons*, 858 F.2d 137 (3rd Cir. 1988) is read narrowly to state that mandamus is appropriate to vacate the orders of a judge who continues to sit despite previously having expressed the intent to disqualify himself or herself. *Pfizer, Inc. v Kelly (In re School Asbestos Litigation)*, 977 F.2d 764, 776 (3rd Cir. 1992). Here, Nelson's motion to disqualify the judge was properly denied (by a different judge), the bankruptcy judge never stated an intention to disqualify himself, and he never was disqualified. No jurisdictional question is presented to this Court.

D. The Proper Entity Obtained Relief From Stay and Foreclosed.

Petitioner argues that because Bank of America was not a party in interest when it requested and obtained relief from the stay (she alleges Citizens was), the Bankruptcy Court acted outside its jurisdiction in making the order granting relief from stay to Bank of America. (Petn 2, 17) (This issue is reached only if the Court finds Bank of America was not the party in interest.) She also asserts that Citizens foreclosed on the property. (Petn 2, 12)

Again, Petitioner has no standing to raise this issue because she was not the bankruptcy debtor. *Tilley v. Vucurevich, supra*, 951 F.2d 242, 245.

Petitioner's argument is also simply incorrect. Contrary to Petitioner's reading of the Trustee's Deed Upon Sale, Citizens was the *purchaser* at the trustee's sale. (Petn 2, 12, ER 120-121) Bank of America foreclosed as servicing agent for Citizens Federal Bank. (ER 120-121) Bank of America had assigned its note and trust deed to Citizens Federal Bank in 1986 and continued to service the loan on Citizens' behalf through the sale. (BA's ER 39) Their Servicing Agreement required Bank of America to foreclose on mortgaged properties under default. (BA's ER 111-112) Bank of America obtained relief from stay and caused the trustee to foreclose, and Citizens purchased the property at the sale. (BA's ER 39; ER 120-121)

E. Petitioner's Abstention Argument Lacks Merit and was not Properly Raised Below.

Petitioner asserts that 28 U.S.C. § 1334(c)(1) required the Bankruptcy Court and District Court to abstain before the state Superior Court considered a core bankruptcy matter, although Petitioner does not specify what matter the Courts should have abstained from hearing. Section 1334(c)(1) does not require abstention, as Petitioner argues. It is discretionary.

Petitioner did not assert this abstention argument in her Ninth Circuit brief on the merits, and it should not be considered by this Court. *National Collegiate Athletic Assn. v. Smith*, *supra*, 525 U.S. 459, 119 S. Ct. 924, 930.

Procedurally, Petitioner's argument makes no sense. Nelson chose the state court forum herself and did not ask the Bankruptcy Court to abstain, nor does she state any authority for her proposition that a court must affirmatively abstain under these circumstances. Also, since the District Court was not involved until January 1996, a year after Nelson's state court case was dismissed, it was impossible for it to abstain. (Petn 9, 13)

Nelson's lien challenge before the Superior Court was not a "core" bankruptcy matter. Lot 13 was out of the debtor's estate due to the settlement. (Petn 8, 9) Core proceedings are those matters necessarily incidental to a bankruptcy case that affect the restructuring of debtor-creditor relations and the liquidation of estate assets. *Edgcomb Metals Co. v. Eastmet Corp.*, 89 B.R. 546, 548 (D. Md. 1988). Non-core proceedings are not subject to mandatory abstention provisions. 28 U.S.C. § 157.

Nor does the Stipulation guarantee to Nelson that the Bankruptcy Court would hear her lien challenges, as she claims. (Petn 2, 7-8) The stipulation merely permits her to challenge the liens but does not specify a forum (App 13), and the Bankruptcy Court reserved jurisdiction only to implement the terms of the stipulation, not to retain exclusive jurisdiction to hear Nelson's lien challenge. (App 19)

CONCLUSION

There was no error below, and there are no important questions or conflicts for this Court to respondent. Bank of America N.A. respectfully asks this Court to deny the petition.

Respectfully submitted,

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(4)

Supreme Court, U.S.
FILED
FEB 9 2000
OFFICE OF THE CLERK

No. 99-978

IN THE

SUPREME COURT OF THE UNITED STATES

Warren J. Michaels, Executor,
Estate of Edna L. Nelson,
Petitioner,

v.

Bank of America N.T. & S.A. and
Citizens Federal Bank,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

SUMMARY

As will be shown herein, Bank of America's Brief in Opposition misstates the facts and Petitioner's legal arguments contained in the appellate record. The Bank's legal arguments and authority in support thereof are off point and therefore detracts from the inherently important federal and public issues raised in the Petition.

All of Bank of America's alleged facts in this Case are imputed from either a state court judgment subject to collateral attack for lack of jurisdiction or contained in the findings and orders of the bankruptcy judge who owned stock in the Bank on each occasion. Therefore, the Brief in Opposition detracts from and obscures the bankruptcy, jurisdictional, and judge conflict issues presented in the Petition which must be answered before any of Bank of America's alleged facts are supported by legal authority to be facts at all.

Petitioner will herein dispose of all of the misplaced issues raised in the Brief in Opposition. Petitioner will then show how the exclusive jurisdiction of the federal courts of bankruptcy matters, raised in the Petition, is inexorably intertwined with the firmly embedded clauses in the Constitution of the United States which provide for uniformity of bankruptcy law, supremacy of federal law, and the principle of federalism.

It is appropriate here to remember one of the most important utterances in the literature of constitutional law made by former Chief Justice John Marshall: "it is a *constitution* we are expounding." *McCulloch v. Maryland*, 17 US (4 Wheat.) 316 (1819). With this utterance in mind, what issues could be more important than the integrity of the federal judiciary and the Constitutional grant of plenary power to establish uniform and supreme federal law on the subject of bankruptcy to the exclusion of the state courts?

MISSTATEMENTS OF FACTS IN THE RECORD

In its Brief in Opposition, Bank of America makes material misstatements of facts contained in the appellate record in its Introduction, Statement of the Case, and Arguments. The misstatements concern the identity of the foreclosing entity and the facts concerning the bankruptcy judge's disqualification. These misstatements will be addressed in this reply under the appropriate heading, infra.

REPLY TO RESPONDENT'S ARGUMENTS

A. Res Judicata and Collateral Estoppel Do Not Bar Nelson's Federal Court Challenges to the Bank's Claim of Right to Foreclose.

Bank of America argues that no reason exists for this Court to review the ruling of the Ninth Circuit barring Petitioner's claims by reason of res judicata and collateral estoppel, citing *First National Bank v. Russell (In re Russell)*, 76 F.3d 242, 245 (9th Cir.1996). (p. 5). ("*Russell*").

To the contrary, the Ninth's Circuit's opinion is extremely erroneous and the authority cited is also extremely important because it is intrusive of the exclusive jurisdiction of the federal courts of bankruptcy matters.

There are two fallacies in the Ninth Circuit's decision. First, a state court judgment entered in a case that falls within the federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts. *Kalb v. Feuerstein*, 308 U.S. 433 (1940). Second, the holding in *Russell* applied California res judicata and collateral estoppel doctrine to a state court judgment to bar a discrimination claim arising under 42 U.S.C. § 1981 subsequently filed in the bankruptcy court. The fallacy is that a state court may adjudicate a federal discrimination claim because it does not fall within the exclusive jurisdiction of the federal courts.

Petitioner's claims fall within the exclusive jurisdiction of the federal bankruptcy court because they are core bankruptcy proceedings.

The determination of the validity of liens is defined as a core bankruptcy proceeding by statute. 28 U.S.C. § 157(b)(2)(k). A claim under 11 U.S.C. § 362(h) arises under Title 11 and has also been held to be a core proceeding. *Johnston Environmental Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 617 (9th Cir.1993). ("*Goodman*"). These core bankruptcy claims also arise out of the core proceedings in the Bankruptcy Case, including, the relief granted from the automatic stay and the Stipulation in settlement of Ms. Nelson's claims against the debtor under Sections 523 and 727 of Title 11. In clear and unequivocal language, the Stipulation provides Petitioner with the right to contest the validity of the lien under the reserved jurisdiction of the Bankruptcy Court. (App. 13 & 19). Bankruptcy courts must retain jurisdiction to construe their own orders and a request to the court to do so has been held to arise under the Bankruptcy Code. *Beneficial Trust Deeds v. Franklin (In re Franklin)*, 802 F.2d 324, 326 (9th Cir.1986).

The exclusive federal jurisdiction of the federal courts of core bankruptcy proceedings may be relinquished only by abstention under 28 U.S.C. §1334 (c)(1) discussed, infra.

B. Ms. Nelson and Her Estate Possess Standing.

Petitioner possesses independent standing under Section 362(h) of the Bankruptcy Code, the Stipulation, and Ninth Circuit authority.

" An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(h).

In clear and unequivocal language, the Stipulation provides Petitioner with the right to contest the validity of the

lien under the reserved jurisdiction of the Bankruptcy Court. (App. 13 & 19).

Under Ninth Circuit authority, creditors have standing to attack a violation of the automatic stay. *Goodman*, 991 F.2d 613, 618 (9th Cir.1993). Persons who are directly and adversely affected pecuniarily by an order of the bankruptcy court have standing to appeal the order. *Everex Systems, Inc. v. Cadtrak Corp. (In re CFLC, Inc.)*, 89 F.3d 673, 675-676 (9th Cir.1996). ("*Everex*")

All of Bank of America's cited authority on standing is misplaced. The primary authority cited by the Bank is in *Tilley v. Vucurevich (In re Pecan Groves of Arizona)*, 951 F.2d 242 (9th Cir.1991). (pp. 5, 6, & 8). There, the intervenor appealed rather than the original party to the lawsuit. The requirement of the intervenor's independent standing was pointed out in *Everex* at 675. In the other authorities cited by the Bank, the litigants lacked standing because they were not pre-petition creditors in those bankruptcy cases.

Bank of America's authorities cited in support of its argument that the bankruptcy court lacked jurisdiction of the lien issue because Lot 13 was sold to a third party and passed outside of the estate is also misplaced. In one of those cases cited, the adversary proceeding involved an issue not related to the administration of the bankruptcy case and in the other a procedural error was determined to be not so egregious.

In this case, the orders of the bankruptcy court and the conduct of the debtor, a bankruptcy attorney, the bankruptcy judge, and the Bank Respondents have adversely affected Ms. Nelson and Petitioner. Moreover, multiple due process violations occurred during the pendency and in the heart and soul of the core bankruptcy case, discussed, infra. Here, if the property passed out of the estate at all, it was subject to Ms. Nelson's right to contest the lien under the jurisdiction of the bankruptcy court. Bank of America did not object to the Stipulation and it was noticed and given the opportunity to object prior to the foreclosure sale.

C. The Bankruptcy Judge Lacked Jurisdiction and the Power to Order Relief from the Stay Based on His Actual Ownership of Stock in Bank of America.[1]

The Ninth Circuit failed to apply its own statements in a near identical situation as in Petitioner's case. *Davis v. Xerox*, 811 F.2d 1293 (9th Cir.1987). A disqualification objection was timely when discovered on appeal and brought to the attention of the appeals court. *Id.* 1296. ("Where the express statute standard has been violated and a judge has sat whom Congress has disqualified from sitting, the disqualified judge's rulings are, on appeal, to be vacated."). In Petitioner's case, the objective contention "What the judge has publicly declared he owns, he *knows* he owns" certainly would apply. *Id.*

Contrary to Bank of America's misleading statements (p. 6), Petitioner's motion to disqualify the judge from *further* proceeding in the Adversary Proceeding was denied without prejudice by a "disinterested [bankruptcy] judge" at a hearing after Ms. Nelson requested the Ninth Circuit to take judicial notice of the motion. Not in the appellate record is the fact that the judge properly concluded that the bankruptcy court did not have jurisdiction of the matter because the case was pending in the Ninth Circuit. Contrary to the Bank's claim, the discovery of the disqualification facts did not occur until in or about July of 1997. The court of appeals denied Ms. Nelson's motion for summary reversal, including her alternative request to amend her brief to include the disqualification issue, but referred her request for judicial notice to the merit panel. (App.-03).

Although the denial of a motion to disqualify a judge is interlocutory *United States v. Washington*, 573 F.2d 1121,

---

[1] In a recent hearing in related cases on remand, heard on January 13, 2000, the bankruptcy judge admitted that he was disqualified during the pendency of the bankruptcy case. Petitioner will file a supplemental brief immediately after receipt of the transcript of the hearing.

1122 (9th Cir.1978), the damage caused by the disqualified bankruptcy judge had already been done. The judge's plain disqualification coupled with its effect on the issues on appeal and brought to the attention of the appellate court by judicial notice should have been considered. (See *Id.* 1123).

Bank of America's laches argument also fails. *Costello v. United States*, 365 US 265, 282 (1961). ("Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense."). Ms. Nelson did not know of the judge's conflict until the case was pending in the court of appeals. Also, there can be no prejudice to the Banks if they perpetrated the frauds as alleged in the complaint. Although 28 U.S.C. § 455(b)(4) is controlling in this case, Rule 60(b)(4) (void judgments) and independent action for fraud upon the court (the complaint) under the Federal Rules of Civil Procedure are more appropriate than the authority cited by the Bank.

D. Relief from the Stay was not Obtained Lawfully and the Proper Entity, if any, is Unknown.

Contrary to Bank of America's claims, the complaint alleges that neither Bank was the owner of the deed of trust (party in interest) and that they perpetrated a fraud on the court. These issues must be decided before a federal judge who does not hold a financial interest in the Banks. Federal courts have inherent power to investigate whether a judgment was obtained by fraud. *Universal Oil Products Co. v. Root Refining Co.*, 328 US 575, 580 (1946). In the words of former Justice Roberts: "No fraud is more odious than an attempt to subvert the administration of justice." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 US 238, 251 (1944). When a fraud has been practiced upon it, a court has both the duty and the power to vacate its own judgment or restrain the beneficiaries of the judgment from taking any benefit from it. *Id.* 245-250.

Bank of America's use of the phrase "Citizens was actually the beneficiary" (p. 3) is misleading because the complaint uses the phrase "claimed beneficiary" (ER 39-40). The Bank's claim that Citizens did not foreclose is also misleading and false. (p. 1). The Trustee's Deed Upon Sale states under penalty of perjury that Citizens was the foreclosing beneficiary and grantee. (ER 120-121). These distinctions are important in stay relief motions.

Another misleading statement is "Nelson knew in July of 1992 that Bank of America had obtained relief" (p. 2). Ms. Nelson first became aware that the judge had granted relief from the stay to Bank of America on July 29, 1992.

Ms. Nelson has standing to contest the relief from stay order. Multiple violations of due process occurred here. Both Ms. Nelson and the debtor were not noticed of the motion. Ms. Nelson was to be the recipient of the property in settlement of her fraud claim against debtor and therefore stepped into the shoes of debtor. Restatement (Second) of Judgments, 209-210 (1982). And, the bankruptcy judge owned stock in the Bank.

E. Petitioner's Abstention Argument is an Integral Component of Statutory Interpretation of Section 1334 of the Judicial Code. Abstention is the Only Mechanism Available to a Federal Court to Relinquish its Exclusive Jurisdiction of Bankruptcy Matters and Route Them to a State Court.

Contrary to Bank of America's claim (p. 9), Ms. Nelson asserted the exclusive jurisdiction of the district court under 28 U.S.C. § 1334, delegated to the bankruptcy court under 28 U.S.C. §157(a) & (b) in her opening brief on page 58. In fact, almost every argument in her brief addresses core bankruptcy issues and the exclusive jurisdiction of the bankruptcy court. The abstention clauses in 28 U.S.C. § 1334 are the only mechanism available for the federal courts to relinquish their exclusive jurisdiction of bankruptcy matters.

The state court barred Ms. Nelson's entire complaint by applying the doctrines of res judicata and collateral estoppel to the bankruptcy Stipulation. (App.-54). Prior to this judgment, the state court "wholesale adopted" findings of fact", prepared by Bank of America's attorney, which intruded upon the "lien contest" clause in the Stipulation. This, the state court could not do without intruding into the exclusive jurisdiction of the federal courts.

The Constitution limits state power. U.S. CONST. amend. X. The Constitution delegates few but defined and enumerated plenary powers to Congress. See U.S. CONST. art I, § 8. Included therein is the power to establish uniform laws on the subject of bankruptcies throughout the United States. U.S.CONST. art. I, §8, cl. 4. The Constitution provides Congress with the power to make all laws necessary and proper for carrying out the powers enumerated in Section 8 of Article 1 and all other powers vested in the Government of the United States. U.S. CONST. art. I, §8, cl. 18. The judicial power of the United States is vested in one Supreme Court and in such other inferior courts, which Congress may establish. U.S. CONST. art. III, § 1. The Constitution and the laws of the United States made in pursuance thereof are supreme. U.S. CONST. art. VI, cl. 2.

Congress exercised its plenary power to establish uniform laws on the subject of bankruptcy and created and provided for the inferior federal courts, to the exclusion of the states, to administer the bankruptcy laws in accordance with its prerogatives under the Constitution.

On June 25, 1948, Congress revised, codified, and enacted into law Title 28 of the United States Code. 62 Stat 869-1008. The district courts jurisdiction of bankruptcy matters and proceedings was original and exclusive of the state courts. 62 Stat 931. (App. 48).

Under the 1948 Act, Congress granted the district courts original jurisdiction, exclusive of the state courts, in only six other subject matter areas. (See 62 Stat 931-934).

On November 6, 1978, Congress enacted the Bankruptcy Reform Act of 1978, an act to establish a uniform law on the subject of bankruptcy. 92 Stat 2549. Under Section 241(a) of the 1978 Act, Congress employed a jurisdictional statutory scheme codified at 28 USC § 1471. Congressional intent under the 1978 Act was to broadly expand the jurisdiction of the bankruptcy court. The Court held that the broad grant of jurisdiction to the bankruptcy courts contained in 28 USC § 1471 is unconstitutional. *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 US 50, 87 (1982). ("*Marathon*").

In response to the *Marathon* decision, on July 10, 1984, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984. 98 Stat 333. Section 101(a) of the 1984 Act amended Section 1334 of Title 28 of the United States Code. Congress has since enacted amendments to Section 1334 that are not relevant to the issues here.

Under Section 1334 of the current Judicial Code, the jurisdiction of the district court which is delegated to the bankruptcy court under 28 U.S.C. § 157(a) is original and exclusive in almost every conceivable way. The only exception is in subsection (b) where the jurisdiction is original but not exclusive. (See App. 48-49). This exception performs two functions. First, it provides the district and bankruptcy courts original jurisdiction even in cases where Congress has provided other courts with exclusive jurisdiction. The second function, which is relevant to this case, allows the federal courts to abstain under subsections (c)(1) & (2). It is a necessary prerequisite to the power to abstain. (See 1 Collier on Bankruptcy, ¶3.01[4] (Mathew Bender 15th Ed. Revised 1999). Abstention is defined as "A federal court's relinquishment of jurisdiction when necessary to avoid needless conflict with a state's administration of its own affairs." Blacks Law Dictionary (West Group 1999). Thus, state courts cannot hear core bankruptcy matters unless the federal courts abstain.

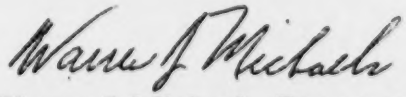
In *Marathon* the Court held Congress' statutory scheme under the Bankruptcy Reform Act of 1978 unconstitutional. In this case, the Court should uphold Congress' Constitutional prerogative to grant jurisdiction of bankruptcy matters to the district court and the bankruptcy court, exclusive of the State courts, unless abstention is granted under either Section 1334(c)(1) or (2) of the current Judicial Code of the United States.

CONCLUSION

That the highest court in the land may grant a common person the opportunity to argue the interpretation and application of the Judicial Code before it is testimony to the greatness and strength of the United States of America.

This Court should grant the petition for a writ of certiorari because of the extreme importance of the statutory provisions involved under the Judicial Code. The strict application of Section 455(b)(4) promotes public confidence in the integrity of Our judicial branch of government. The interpretation and application of Section 1334 rises to the height of the most historic issues presented to this Court because this statutory provision affects the fundamental principals of federalism, supremacy, and uniformity of law that We provided for in the clauses of Our Constitution.

Respectfully submitted,



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February 9, 2000

(6)

No. 99-97

Supreme Court, U.S.
FILED
FEB 25 2000
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Warren J. Michaels, Executor,
Estate of Edna L. Nelson,
Petitioner,

v.

Bank of America N.T. & S.A. and
Citizens Federal Bank,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

Warren J. Michaels, Executor,
Estate of Edna L. Nelson
In Propria Persona
2245 Gene Autry Trail, Unit E
Palm Springs, California 92264
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13pp

PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner submits the following new matter in accordance with Rule 15.8 and as noted on page five (5) of his Reply to Brief in Opposition.

On January 13, 2000, a hearing in related cases remanded from the United States Court of Appeals for the Ninth Circuit was heard in the Bankruptcy Court for the Central District of California, Riverside Division.

On February 23, 2000, Petitioner received the official transcript of the hearing of the above matters. The relevant portions of the hearing transcript are in the Appendix included herein immediately following this Supplemental Brief. (See Pages 4 through 12).

At the hearing, the bankruptcy judge admitted that he owned stock in Bank of America during the pendency of the bankruptcy case at times when he made rulings as to the Bank. (See Pages 6 & 8). In fairness to an objective reading of the transcript, the bankruptcy judge hedged his position as to his knowledge of holding Bank of America stock at the time. (See Page 6). However, with all due respect to the Court, the bankruptcy judge's hedge statements cannot be considered credible because of the timing and duration of his stock holding in Bank of America reported by him in his financial disclosure reports.
(See Petition, Page 3).

The integrity of the federal judiciary is a public issue that is too important to consider delving into comparisons between a judge's ambiguous statements and what he discloses publicly in his financial disclosure reports. With all due respect for the integrity of all judges, and to their right to be heard fairly, knowledge of financial holdings should be imputed from their financial disclosure reports under the

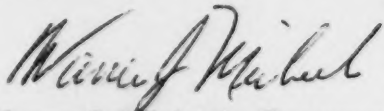
circumstances of this case because a reasonable person would not believe otherwise.

CONCLUSION

In imputing knowledge to a federal judge from his or her financial disclosure reports, the Court should apply the reasoning stated by the Ninth Circuit in *Davis v. Xerox*, 811 F.2d 1293 (9th Cir 1987). (See Reply Brief, Page 5).

The importance of the judge disqualification issue does not detract from the historic importance of one of the other questions presented in this case, the exclusive jurisdiction of the federal courts under Section 1334 of the Judicial Code of the United States.

Respectfully submitted,



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February 24, 2000

APPENDIX
TO
PETITIONER'S SUPPLEMENTAL BRIEF

ORIGINAL

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

--oOo—

In Re:	) Case No. RS91-19414-MG
Ralph Gilbert Nelson,	) Riverside, California
	) Thursday, January 13, 2000
Debtor.	) 2:30 P.M.
	) Chapter 7
Warren J. Michaels, Executor of the Estate of Edna L. Nelson,	) Adv. No. RS95-01439-MG
	) Order for Status Conference
Plaintiff,	) re remand of certain issues.
vs.	)
Bank of America National Trust,	)
Defendant.	)
Warren J. Michaels, Executor of the estate of Edna L. Nelson.	) Adv. No. RS95-01435-MG
	) Status Conference re recent
Plaintiff,	) remand of certain issues.
vs.	)
Las Palmas Professional Center, Inc.,	)
Defendant.	)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MITCHEL R. GOLDBERG
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Address nor provided)

For Estate of Edna L. Nelson: Warren J. Michaels
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Transcription Service: V/ARS, Inc.
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Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.

***

MR. MICHAELS:

***

I think there are very important issues, but here is the issue that I see that relates to you. And I don't mean to embarrass you one bit, but as far as I'm concerned, in the issue before the United States Supreme Court, one of the issues is the conflict of interest that you had with B of A in the case.

And I think that as far as you can go in this case, even with the ones that remained, is to suggest settlement, and if I can reach a settlement with all of these defendants, have another bankruptcy judge sign the order of settlement, because this issue is - -

THE COURT: Yeah. Judge Naugle, in the issue of B of A ruled, and I think correctly so in light of the criteria, unbeknownst to me, since I had someone else managing my affairs, I owned some stock in B of A at the time I made rulings. I mean, I recognize that, that's why I had someone else deal with it. Didn't know it at the time, but turns out I did, and you've searched, I guess, my financials and figured it out.

So, the reality is, is that I agree with you on that. I probably will not hear the B of A matters.

***

[Page] 12

***

I no longer have an interest in B of A, but I don't think that matters.

***

MR. MICHAELS:

***

But the next thing, I actually - - I don't want to, but I have to make another recusal motion because Judge Naugle denied without prejudice that recusal motion.

THE COURT: As to the B of A.

MR. MICHAELS: Right. Unless you disqualify yourself.

[Page] 13

But, you know, these cases are not - -

THE COURT: I would not like to bury another judge with this case but I probably will recuse myself on B of A.

MR. MICHAELS: I wouldn't either, and that's why I think the parties here have a responsibility to the Courts, because this case has been a disgrace.

***

[Page] 14

***

THE COURT: -- Three of the units, that the issues to B of A, not only do we have to get it clarified, and they're not present today for whatever reason, but that as to the B of A, we have to deal with the subsequent issue that because the period of time I held an extremely small amount of stock in B of A, or based on my financial records through a management company that was managing specific stocks, buying and selling them, I believe under the guidelines that have been issued that I do have to recuse myself.

What I don't know is if because during the time this case was up at the Appellate Court and the Appellate Court has remanded, and during that period of time I've divested myself of a management company that just took money, invested in 50 shares here and just put it all in mutual funds so I can avoid that problem, --

MR. MICHAELS: Uh-huh.

THE COURT: -- that whether or not, because there was a prior ownership during the course of the case, I would have to recuse myself. Assuming I do, if there is anything there that does it, I'd love to recuse myself from this case - -

MR. MICHAELS: I understand that, and --

[Page] 15

THE COURT: -- for a whole variety of reasons. I just feel very bad that another judge would have to pick this mess up.

MR. MICHAELS: Absolutely. I think I would feel bad that another bankruptcy judge would have to pick up this case.

***

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***

THE COURT: I'm going to give a noticed trial-setting conference on the B of A matter, and that the Court will consider sanctions if appearances are not made.

On the B of A case, and I believe the third cause of action for fraud and misrepresentation is in the – I believe that's in the – which case number is that in, the medical?

MR. MICHAELS: 1439.

THE COURT: 1439.

MR. MICHAELS: Medical Condo.

***

THE COURT: Okay. I'm more interested – the third claim is what was sent back. I will have an amended status conference on the remanded issues in case No. 1439.

I want you to give notice on this, Mr. Michaels, and I want you to put in the notice that failure of Bank of America to attend and to present a statement of its position at least one week before the hearing, to the extent it has a position as -- other than to go forth to trial, will result in potential sanctions. I want to put them on written notice on that issue.

***

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***

But I want to have a meeting with B of A to determine two issues.

With the B of A issue on misrepresentation and fraud coming back, the 9th Circuit said that while I had the right to abstain on one issue, I made – the rulings I made on the other issue were inappropriate because I treated them as 362(h) issues.

[Page] 51

And so B of A needs to sit down. If it wishes to argue that I've abstained and you should initiate lawsuits in State Court for fraud and misrepresentation, fraudulent sales, they better file papers and have a motion on that if they want to do it, otherwise, they better show up in my court.

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MR. MICHAELS: But the problem is, is that showing up at your court at this point in time when you were disqualified when you made your ruling, --

THE COURT: Well, --

***

Well, if you wish to file a paper that all matters relating to B of A, I should recuse myself, renew your motion.

MR. MICHAELS: Yeah. I have to do that because - -

THE COURT: I have no problem with it.

MR. MICHAELS: -- I have to protect the estate's legal rights.

THE COURT: In order to get some timing going, file your motion. I will take a look at it. If I rule that I have to recuse myself, and notice B of A on it, I'll set that matter out far enough that you can file your motion. I have no problem with you filing your motion.

MR. MICHAELS: Okay.

THE COURT: My skin isn't that thin.

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Okay. To file your motion at least will determine (a) whether I refer it over to someone else like Judge Naugle to hear it again, or whether I rule on my own. I will only rule on my own if I'm going to rule against me. I generally will not rule, saying, you know, I have standing. I'd rather have someone else do that.

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But to the extent if you at least file the motion, until something is done, I want to get B of A into the courtroom.

MR. MICHAELS: Okay. I - -

THE COURT: And I think that's advantageous to you.

MR. MICHAELS: Well, sure, but - -

THE COURT: Okay. So, whether it's going to be me, someone else, whether it's going to be sent to State Court on an abstention issue, because all those issues are state law issues as much as they have relationship to the bankruptcy case, but there is an overlap.

MR. MICHAELS: Right.

THE COURT: Whoever is going to decide it, whether it be me or someone else, I want to get the ball rolling, and so by setting up some hearing dates, I'm not asking you that you consent that I have jurisdiction. I'm just ordering - - the 9 th Circuit sent the case back. There has been no ruling that I must recuse myself. It's without prejudice. Now that B of A is back, renew your motion if you so desire. I'm not going to be offended by it.

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above entitled matter.

S/ Gwen J. Van Every February 17, 2000
Gwen J. Van Every, Transcriber

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